

**COPY**

1 Mildred C. Richardson )  
2 et al., ) In the  
3 Plaintiff ) Circuit Court  
4 ) For  
5 vs. ) Baltimore City  
6 )  
7 Philip Morris, Incorporated, ) Case No.:  
8 et al., ) 96145050/CE212596  
9 Defendant ) VOLUME II

10 -----  
11 Deposition of **LEONARD ZAHN** taken on  
12 Wednesday, December 16, 1998 at 9:12 a.m., at the  
13 Inn at Great Neck, 30 Cutter Mill Road, Great  
14 Neck, NY before E. Duane Smith, RPR-CRR, Notary  
15 Public.

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19  
20 Reported by:  
21 E. Duane Smith, RPR-CRR

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**COPY**

1 SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
2 Samuel Albert Reed, )  
3 Plaintiff )  
4 v. )  
5 Philip Morris, Incorporated, ) Civil Action No.:  
6 et al., ) 96-050750  
7 Defendant ) VOLUME II

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1 APPEARANCES

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10 Mildred Richardson/Samuel Reed  
11

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18 On Behalf of the Plaintiffs  
19 Iron Workers Local 17  
20  
21

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8 On Behalf of the Defendant

9 Council for Tobacco Research and

10 the Witness

11  
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17 On Behalf of the Defendant

18 Council for Tobacco Research

19  
20 Also present: Jim Brady, Videographer

21  
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## P R O C E E D I N G S

Whereupon, --

MR. KRISTAL: Why don't we put something on the record, what my understanding is, and we'll wait for whoever comes here and broach the subject and move on.

This is a continuation of Mr. Zahn's deposition in both the Iron Workers case, which is pending in Ohio, and also several of the Angelos firm cases.

We, in the Iron Workers case, had a status conference with Judge Gwin, G-w-i-n, in Akron last Thursday and the subject of privileged documents at deposition was raised.

The judge at that time ruled from the bench that a witness is not to be instructed not to answer, that the attorneys representing the defendants should assert whatever privileges they feel are appropriate and that portion of the deposition would be sealed and then at some point there would be rulings on privilege issues.

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1           We are awaiting the arrival, as far as  
2           I understand it, of someone who will speak  
3           directly to that issue regarding a protocol, and  
4           I don't believe we have any privileged documents  
5           at this time, at least initially in the beginning  
6           of the deposition, so we can breach with that  
7           subject when he gets here.

8           MR. KLUGMAN: This is Steve Klugman,  
9           and I am here on behalf of the witness,  
10          Mr. Zahn. I also represent the Council for  
11          Tobacco Research, CTR.

12          CTR is no longer a defendant in the  
13          Iron Workers case. I have talked to  
14          representatives, to counsel for defendants in the  
15          Iron Workers case, and I do understand that the  
16          judge issued a ruling from the bench last week.

17          I also understand that as of lat  
18          yesterday, there was no written order. As a  
19          result of my status in the case, CTR's status in  
20          the case, Mr. Zahn's status as a non-party in the  
21          case, and the fact that there is no written

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1 order, I have asked Mr. Kristal if he could await  
2 the arrival of counsel for one of the defendants  
3 to address any privilege issues that might come  
4 up.

5 Mr. Kristal has agreed to do that, so  
6 why don't we proceed?

7 VIDEO OPERATOR: Today's date is  
8 December 16, 1998. The time is 9:12 a.m. This  
9 is the continuing deposition of Leonard Zahn, and  
10 my name is Jim Brady.

11 I'm the videographer from Certified  
12 Video Productions.

13 I ask now that the attorneys introduce  
14 themselves and for the court reporter to reswear  
15 the witness.

16 MR. KRISTAL: Jerry Kristal, from Weitz  
17 & Luxenberg on behalf of the plaintiffs.

18 MR. BOAS: Craig Boas from the Law  
19 Offices of Peter Angelos on behalf of the  
20 plaintiffs in Richardson and Reed.

21 MR. KLUGMAN: Steve Klugman, Debevoise

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1 & Plimpton, we represent Mr. Zahn and we also  
2 represent the Council for Tobacco Research, which  
3 is a defendant in the Richardson case.

4 MS. WOODWARD: Sky Woodward from Miles &  
5 Stockbridge in Baltimore, representing the  
6 Council for Tobacco Research in the Richardson  
7 and Reed matters.

8 MR. KLUGMAN: I'm sorry, this is a Reed  
9 deposition, as well.

10 MR. BOAS: I believe it has all of the  
11 Maryland case names.

12 MR. KLUGMAN: Okay. I thought it had  
13 been a Maryland and Richardson deposition. Well,  
14 we're in the Reed case as well.

15 LEONARD ZAHN,  
16 being first duly sworn to tell the truth, the  
17 whole truth, and nothing but the truth, testified  
18 as follows:

19 EXAMINATION BY MR. KRISTAL:

20 Q. Good morning, Mr. Zahn, Jerry Kristal.  
21 How are you this morning?

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1           A.    Good morning.   Fine.   Thank you.

2           Q.    We are continuing from your deposition  
3 of a little over two weeks ago.

4                   Same ground rules apply.   Let me just  
5 go over them real quickly.   If you don't  
6 understand a question that I am asking you,  
7 please stop me before you answer, tell me you  
8 don't understand it, ask me to rephrase it, do  
9 something to indicate that you don't understand  
10 it, because it is very important to all of us  
11 here that you answer questions that you  
12 understand.   Is that okay.

13          A.    Yes, yes.   Very good.

14          Q.    Two other ground rules.   I will try to  
15 my best to wait until you finish your answer  
16 before asking you the next question, and I would  
17 ask you to try to wait until I finish my question  
18 before giving your answer.

19                   And also as you know from last time,  
20 counsel may have objections at different times.  
21 and it is a great benefit to our court reporter

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1 here not to talk over each other, okay?

2 A. Yes.

3 Q. And my last word of advice is we need  
4 to give oral responses, yes's or no's as opposed  
5 to shakes or nods of the head.

6 A. Yes. I know.

7 Q. Now, Mr. Zahn, you worked in some  
8 capacity as a consultant for the tobacco industry  
9 between 1955 and 1994; is that the time span?

10 MR. KLUGMAN: Objection to the form.

11 A. Yes. When you say the tobacco  
12 industry, I did work almost entirely at that  
13 time, just for CTR, the Council for Tobacco  
14 Research.

15 Q. You also did some work for the Tobacco  
16 Institute, I think we talked about last time?

17 MR. KLUGMAN: Objection to the form.

18 Q. Is that correct?

19 A. I did some work for the Tobacco  
20 Institute when I was with Hill & Knowlton. And  
21 when I had my own organization, after 1969, I did

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1 one project for the Tobacco Institute. That was  
2 my sole salaried, if you will, connection with  
3 the Tobacco Institute.

4 Q. You also, if you recall, and we'll I'm  
5 sure get into it later today, a consultancy  
6 arrangement with Philip Morris regarding the  
7 conference in Stockholm, Sweden, in 1979. Do you  
8 recall that?

9 MR. KLUGMAN: Objection to the form.

10 A. I don't think I was doing work for  
11 Philip Morris in Stockholm.

12 Q. You recall going to Stockholm, though,  
13 we'll get into that later. You recall that  
14 meeting, the Fourth World Conference on Smoking  
15 and Health?

16 A. Yes. I believe I do. I haven't  
17 thought of it since that time, I think.

18 Q. Have you ever done any work for Philip  
19 Morris, consultancy work?

20 A. In Europe, yes.

21 Q. That was with Mr. Paul Isenring of

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1 Philip Morris?

2 A. Isenring.

3 Q. I-s-e-n-r-i-n-g?

4 A. Yes, sir. The late Mr. Isenring.

5 Q. Have you ever done any consultancy work  
6 for any other specific company other than Philip  
7 Morris in Europe?

8 MR. KLUGMAN: You mean tobacco  
9 companies?

10 MR. KRISTAL: Yes. I'm sorry. Thank  
11 you.

12 A. I cannot recall that I ever did that.

13 Q. Now, through the course of your  
14 consultancy with either CTR or the Tobacco  
15 Institute or Philip Morris in Europe, you have  
16 attended a number of scientific conferences  
17 throughout the years on the subject of smoking  
18 cigarettes, tobacco, health?

19 A. Both on tobacco, which were in the  
20 minority actually, but more on medical/scientific  
21 meetings, which undoubtedly included tobacco in

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1 one or more sections of the program.

2 Q. And you have done fairly extensive  
3 reading on the subject of tobacco, cigarettes,  
4 smoking, health, throughout the course of your  
5 career?

6 A. Yes.

7 Q. And that would be from published  
8 literature as well as internal company  
9 documents?

10 MR. KLUGMAN: Objection to the form.

11 THE WITNESS: I'm sorry.

12 MR. KLUGMAN: Objection to the form.  
13 Go ahead and answer.

14 A. It would be almost entirely published  
15 reports or nonpublished reports, and I did see  
16 company documents related to that area.

17 I'm sure I did. I can't pull a  
18 specific one out of my memory.

19 I would have to say, yes, I read a lot  
20 of things that came in front of me.

21 Q. I guess the point that I was trying to

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1 make is that you had access to more information,  
2 given your consultancy, than someone in the  
3 public who would only have access to the  
4 published literature; is that fair to say?

5 MR. KLUGMAN: Objection to the form.  
6 Vague and ambiguous.

7 A. Oh, yes. That's fair to say.  
8 Absolutely.

9 Q. Now, you would agree that nicotine is a  
10 pharmacologically active agent?

11 A. Yes.

12 Q. And --

13 MR. KLUGMAN: I'm going to object,  
14 Mr. Kristal, and tell Mr. Zahn is not here as an  
15 expert. If you want to ask him some general  
16 questions in this area, that's fine, but I'm not  
17 going to let you go too far with it.

18 Q. And are you aware that the tobacco  
19 industry, during the time period you were  
20 consulting with it, believed that nicotine was a  
21 pharmacologically active agent?

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1 MR. KLUGMAN: Objection to the form.

2 A. Well, are you saying did a company  
3 chief executive officer say to me, Len, I know  
4 that nicotine is pharmacologically active? No,  
5 nothing like that ever happened. I can say I  
6 have to assume that they knew what was in the  
7 chemistry books.

8 Q. And they were also supporting research  
9 in that area; were they not?

10 MR. KLUGMAN: Objection to the form.  
11 Lack of foundation.

12 A. Yes.

13 Q. And you attended conferences where  
14 tobacco industry scientists discussed nicotine?

15 MR. KLUGMAN: Objection to the form.

16 A. I don't think so. I'm -- an  
17 interesting question. I think I recall one  
18 meeting where a tobacco company scientist was on  
19 the program. I'm not sure.

20 And for some reason, I believe that the  
21 scientist was with R.J. Reynolds. But I'm not

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1 even sure of that. I'm not even sure that such a  
2 thing occurred. It seems to my faded memory  
3 that, perhaps, it did occur.

4 But generally, tobacco company  
5 scientists as far as I can recall, if they were  
6 on a scientific program somewhere, it was a very  
7 rare occasion.

8 Q. You would agree that people smoke for  
9 the nicotine?

10 MR. KLUGMAN: Objection to the form.  
11 Go ahead and give him your personal view.

12 A. My personal view is they smoke mostly  
13 for the reaction they get to the nicotine in  
14 tobacco, of course, and in the smoke. But there  
15 are one other two other factors that people smoke  
16 for.

17 But I would say nicotine seems to be  
18 the major reason why people smoke.

19 Q. And that is something that was well  
20 known in the tobacco industry, was it not?

21 MR. KLUGMAN: Objection to the form.

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1 No foundation.

2 A. I would have to assume that, yes.

3 MR. KLUGMAN: I'm going to tell you,  
4 Mr. Zahn, don't assume.

5 THE WITNESS: Okay.

6 MR. KLUGMAN: Tell him what you know,  
7 tell him what you remember, but not what you  
8 assume.

9 THE WITNESS: I have no way of knowing  
10 that.

11 Q. You have been at meetings, you have  
12 been on committees, haven't you, where the fact  
13 that people smoke to get nicotine has been  
14 discussed? That's never happened?

15 MR. KLUGMAN: Objection to the form.

16 A. Oh, I'm sure it did, but I can't  
17 remember.

18 Q. I'm not asking you for specifics. I  
19 realize you are not going to be able to sit here  
20 and say, oh, yes, there was a meeting in June of  
21 1972 or May of 1983, I understand that.

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1           But am I correct that it was well known  
2           through your contacts with the industry, that the  
3           industry believed people smoke because of the  
4           nicotine?

5           MR. KLUGMAN: Same objection I had  
6           before. You want to talk to him about what  
7           people said at meetings, that's one thing, but I  
8           don't know how can tell you what people knew  
9           independent of that. Go ahead, Mr. Zahn.

10          A. Again, Mr. Kristal, I want to answer  
11          you and give you something specific. But it is  
12          almost impossible for me to say that I can't  
13          recall generally, vaguely, specifically or  
14          strongly, that I was at a meeting where people  
15          said, where people from the industry were talking  
16          about nicotine in tobacco and saying, yes, we  
17          know this is why people smoke. The committees  
18          that I served on probably would not have done  
19          that, even if it was a quasi scientific  
20          committee.

21               We wouldn't be spending all our time

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1 talking about nicotine. It is just impossible  
2 really for me to respond.

3 Q. Well, maybe you are not understanding  
4 the question then. Let me give you an example to  
5 try to illustrate what I am asking.

6 A. All right.

7 Q. We can agree that Charlie Connolly was  
8 a quarterback for the New York Giants a long time  
9 ago, you remember that?

10 A. I'll take --

11 Q. Joe Namath for the Jets?

12 A. Oh, yes, I remember.

13 MR. KLUGMAN: He doesn't go back as far  
14 as you do, Mr. Kristal.

15 Q. You can tell us that Joe Namath was a  
16 quarterback for the Jets. You might not be able  
17 to tell us a specific date in which Joe Namath  
18 played in a particular game; is that fair to say?

19 A. Oh, yes, that's true.

20 Q. So I'm not asking you to give us a  
21 specific date that Joe Namath played in a game.

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1 I'm not asking you for a specific meeting.

2 But as a general rule, would you agree  
3 that the tobacco industry was aware that people  
4 smoked for the nicotine?

5 MR. KLUGMAN: And I object, due to the  
6 lack of foundation. Go ahead and answer,  
7 Mr. Zahn?

8 A. Again, did industry representatives  
9 tell me that?

10 Q. No. Was it your understanding --

11 A. Did I --

12 Q. I'm sorry.

13 A. -- I would have to say, yes, it was my  
14 understanding. I mean that's why I used to  
15 smoke.

16 Q. Now, with respect to the disease  
17 causing propensity of cigarette smoking, it was  
18 the public relations position of the tobacco  
19 industry from the first day that you started your  
20 consultancy work in 1955 until you retired in  
21 1994, that whether smoking caused any disease was

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1 an unresolved question. Is that fair to say?

2 MR. KLUGMAN: Objection to form.

3 A. In great part, yes, that is correct.

4 Q. And the public relations position was  
5 that more research needed to be done to determine  
6 whether or not cigarette smoking caused any  
7 disease?

8 MR. KLUGMAN: You are not talking about  
9 Mr. Zahn, you are talking about the tobacco  
10 industry, is that the question?

11 MR. KRISTAL: Yeah, that was part of  
12 what you were involved in was public relations,  
13 if not exclusively, correct?

14 A. Yes, for the Council, CTR.

15 Q. And the CTR would issue public  
16 relations statements regarding the state of the  
17 scientific evidence at times, regarding smoking  
18 and health?

19 MR. KLUGMAN: At times when, just  
20 ever?

21 MR. KRISTAL: At times during your

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1 career.

2 A. No.

3 Q. Never?

4 A. Not that I can remember.

5 Q. Press releases, public relations  
6 statements, were given, written by you and then  
7 sent to various media for publication regarding  
8 the annual reports and the research of the CTR?

9 A. The annual reports, yes.

10 Q. Okay. And in some of those annual  
11 reports, the public relations position taken by  
12 you was that more scientific research needed to  
13 be done to answer the question as to whether or  
14 not cigarette smoking caused disease; is that  
15 fair to say?

16 MR. KLUGMAN: Objection. You lost me,  
17 Mr. Kristal. If Mr. Zahn can follow it, he can  
18 answer it.

19 A. Can you rephrase it and try to be a  
20 little more specific.

21 Q. Sure.

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1           A.    In terms of time and exactly what  
2 parameters you are trying to -- you want me to  
3 respond to. I'm not clear what you are driving  
4 at.

5           Q.    Was the public relations position as  
6 articulated by you for the Council for Tobacco  
7 Research, for the entire period that you were  
8 working from 1955 to 1994, was that position that  
9 the question of whether or not cigarette smoking  
10 caused any disease needed further research?

11           MR. KLUGMAN: Objection. Lack of  
12 foundation. That has a faulty premise in it. Go  
13 ahead.

14           A.    I have to break that up into the time  
15 periods that I really was hoping that you would.

16                   From 1955 to 1969, I worked for Hill &  
17 Knowlton, which represented CTR and its  
18 predecessor organization. Not for that entire  
19 time, because the Council was not a client of  
20 Hill & Knowlton for the last number of years  
21 leading up to 1969.

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1                   You understand what I am saying?

2                   Q.    I'm understanding.

3                   A.    But during whatever years it was a  
4   client and especially the early years -- when I  
5   say early, I mean 1955, perhaps, through to 1960  
6   or something like that -- yes, Hill & Knowlton  
7   did issue statements on behalf of the Council on  
8   the health aspects of smoking raising questions  
9   some of the claims that were being made as  
10   smoking causing this disease or that disease,  
11   things of that kind, and citing medical  
12   literature in general, and many scientists  
13   themselves were saying the same thing.

14                   The situation in the late 50's and  
15   early 60's and perhaps even a little bit longer  
16   is 180 degrees what it has been in the last ten  
17   to fifteen years and certainly in the last ten  
18   years, altogether, night from day.

19                   It is a standard scientific or a  
20   standard statement by scientists, when they are  
21   applying for a grant, reporting results or

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1     whatever, to say more research is needed, even if  
2     they think they have done a lot, because there  
3     are always things to wrap up.

4             Certainly, that was very true of the  
5     smoking and health situation, because it all  
6     boiled down to the question of a lot of  
7     questions, major questions, important questions,  
8     seemed to be unanswered.

9             And scientists are the first to  
10    recognize that and say that.

11            From 1969 on, when I became -- I'm  
12    sorry, somebody just came in -- when I became a  
13    consultant to CTR, I do not recall ever issuing a  
14    press release that discussed anything along the  
15    lines of what I have just been saying.

16            My press releases were pretty much very  
17    straightforward and covered really two things,  
18    the annual report, which in any year, at least  
19    from 1969 on and even earlier, did not go into  
20    any discussion of smoking and health in a general  
21    way or even a specific way, but merely gave

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1 statistics from what was included in the annual  
2 report, the number of dollars spent, the amount  
3 of abstracts published and so forth.

4 I would also issue releases twice a  
5 year when the Scientific Advisory Board to the  
6 Council approved grants and the releases, of  
7 course, would go to the home town newspapers of  
8 those scientists had gotten grants from the  
9 Council.

10 And there was one other occasion in all  
11 these years, that I can recall, in which I did a  
12 release for the media on research into smoking  
13 and health, specifically smoking and lung cancer,  
14 and that was with the Microbiological Associates  
15 done under sponsorship from the Council, when MAI  
16 issued its final report.

17 MR. KRISTAL: I move to strike the  
18 nonresponsive portions of that answer. That is  
19 not out of any disrespect to you, but it is a  
20 legal obligation I have for my client.

21 Let me show you what I will mark as

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1 Exhibit 1.

2 (Whereupon, Zahn Deposition  
3 Exhibit No. 1, memo dated July 6, 1979, marked.)

4 Q. This is on Leonard Zahn & Associates  
5 letterhead; is it not, Mr. Zahn?

6 A. Yes.

7 Q. The title is for: "The Council for  
8 Tobacco Research-USA, Inc., for release Friday  
9 July 6, 1979, and in the upper right-hand corner,  
10 it has printed on the paper "news". Now, this is  
11 a press release that you authored, correct?

12 A. Yes.

13 MR. KLUGMAN: Just wait until he  
14 finishes the question, Mr. Zahn.

15 Q. Yes, this is a press release that you  
16 authored?

17 A. Oh, yes, I do not recall it. But it is  
18 obviously something that I wrote and distributed  
19 for the Council.

20 Q. And this was a public press release  
21 that was disseminated to the media, correct?

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1 A. Yes.

2 Q. And the, in bold underlined, it reads:

3 "Tobacco research group says ... and then in  
4 capital letters, "continued research needed to  
5 find causes of cancer and other major diseases."

6 Did I read that correctly?

7 A. Yes.

8 Q. That was the public relations position  
9 that was being taken by the Council for Tobacco  
10 Research, was it not, regarding the causes of  
11 cancer with respect to cigarette smoking?

12 A. Well, it was --

13 MR. KLUGMAN: Objection to the form.

14 It is vague. Go ahead.

15 A. It was not a public relations  
16 position. It was a scientific position or a  
17 position on a scientific subject.

18 Q. Written by you and your title as their  
19 public relations counsel, correct?

20 A. Yes.

21 Q. This was not written by a scientist?

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1 A. No. I wrote this.

2 Q. And, basically, the thrust of it, if  
3 you will look in the third paragraph: "The  
4 Council pledged continuing financial support to  
5 independent scientists for studies on smoking and  
6 health and expressed optimistic that future  
7 research will help solve the mysteries that still  
8 surround these constitutional ailments."

9 You see that?

10 A. Yes. That's the fourth paragraph, not  
11 the third.

12 Q. Thank you. And that was the position  
13 of CTR, correct?

14 MR. KLUGMAN: Objection to the form.  
15 You can answer.

16 A. Yeah, it was always its position to  
17 continue with financial support.

18 Q. And the financial support, which was  
19 for research to help solve the mysteries,  
20 correct?

21 A. Yes.

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1 Q. The mysteries that you are referring to  
2 here are the mysteries as to whether or not  
3 smoking causes cancer or any disease, correct?

4 MR. KLUGMAN: Objection to the form.  
5 It is leading.

6 A. Yes.

7 Q. Now, this is 1979, correct?

8 A. Yes.

9 Q. And this was the 25th anniversary of  
10 the CTR?

11 A. Yes.

12 Q. And when you retired, it was around the  
13 40th anniversary of the CTR, correct?

14 A. 1954-94, yes.

15 Q. The position of CTR at the time you  
16 retired was the same as you articulated in this  
17 press release, was it not, that more research  
18 needed to be done to answer the question as to  
19 whether or not smoking caused cancer or any other  
20 disease, correct?

21 MR. KLUGMAN: Objection to the form.

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1 MR. KRISTAL: Is that correct?

2 A. I really can't speak for the Council  
3 now.

4 Q. I'm not asking you about that --

5 A. Or even --

6 Q. I'm asking you at the time you retired,  
7 you were working for the Council, right?

8 A. You didn't let me finish.

9 Q. Okay.

10 A. Even going --

11 Q. The reason I stopped you was you were  
12 talking about now, and I wanted you to understand  
13 my question didn't relate to now.

14 MR. KLUGMAN: Mr. Kristal, I would ask  
15 you, even if your intentions are pure, please  
16 don't interrupt the witness.

17 MR. KRISTAL: No. I apologized. I  
18 won't do it again. I was explaining what  
19 happened.

20 A. Now repeat your question.

21 Q. The question was whether in 1994, the

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1 position of the Council for Tobacco Research was  
2 the same as is articulated by you in 1979, which  
3 is, with respect to smoking and whether or not it  
4 causes cancer or other major diseases, it is  
5 still not proven, it's still unknown, more  
6 research needs to be done.

7 MR. KLUGMAN: Objection to the form.  
8 You have misstated his testimony. That's a sin  
9 in Maryland, I don't know whether it is in Ohio,  
10 but we are in both states here.

11 MR. KRISTAL: But for the fact that I  
12 wasn't quoting anybody's testimony.

13 MR. KLUGMAN: You weren't quoting his  
14 or not accurately anyhow. Go ahead, Mr. Zahn.

15 A. It is difficult for me as a layman,  
16 albeit an educated one, in the area of smoking  
17 and health, to say, well, yeah, this has been  
18 proven.

19 Many scientists find it difficult to  
20 say this is proven with no doubt whatsoever. It  
21 can't be a legal definition, one that might come

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1 up in court, because science and medicine just  
2 are not made that way.

3 Yet, I would have to say the Council  
4 generally certainly believed that there had to be  
5 more research to answer what seemed to be  
6 mysteries, a lot of unanswered questions.

7 Assuming that smoking did cause lung  
8 cancer, what is the answer to the fact that only  
9 10 percent of smokers, of heavy smokers, get lung  
10 cancer? What about the other 90 percent? What  
11 causes their lung cancer? Why don't they -- I'm  
12 sorry, I mean why don't the other 90 percent get  
13 lung cancer, if it is a causative agent?

14 The same with heart disease and other  
15 ailments. Certainly, smoking seems to be  
16 involved, but is it involved in saying smoking is  
17 the cause? Is it the sole cause?

18 Many, many scientists, at least from  
19 the literature I recall reading and the meetings  
20 I have gone to, believe and I'm sure the fact is  
21 still true today, that diseases, major diseases

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1 are not based on a single cause or perhaps even  
2 two, but result from a host of factors.

3 And determining these factors and the  
4 importance of each one in this whole spectrum of  
5 the disease certainly is a mystery.

6 If you did not smoke, would there be  
7 fewer lung cancers? Undoubtedly. If we did not  
8 breathe polluted air, would there be fewer lung  
9 cancers? Undoubtedly.

10 I can't give you a better answer than  
11 that, trying to be fair to the question you have  
12 asked and to what limited knowledge I have.

13 Q. Were you done?

14 A. Yes.

15 MR. KRISTAL: I move to strike the  
16 nonresponsive portions of that answer.

17 Q. The question is: Was it the position  
18 in 1994, when you retired, of the Council for  
19 Tobacco Research, that with respect to smoking  
20 and causation of lung cancer, let's just start  
21 with that, was it the position of the Council for

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1 Tobacco Research that smoking caused lung cancer  
2 or was it the position of the Council for Tobacco  
3 Research, that we need to do more research to  
4 find out if smoking causes lung cancer or was the  
5 position something else?

6 MR. KLUGMAN: I object to the form,  
7 Mr. Kristal. I think there is a real flaw in  
8 that question, I will be happy to share it with  
9 you, but I don't want to make a speaking  
10 objection, unless you want me to do this.

11 A. Let me answer as simply as I can. I  
12 believe the fact that the Council continued to  
13 provide money annually to provide research in  
14 that area, as well as other areas related to  
15 smoking and to diseases, major diseases  
16 generally, yes, the Council apparently believed  
17 that more research had to be done, and in 1994,  
18 and even after that, I would guess, because they  
19 continued to provide funds.

20 Q. Now, I'm not talking about research  
21 into why some smokers don't get lung cancer,

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1       whether there are other contributing factors, I'm  
2       talking about research on the very fundamental  
3       question as to whether or not smoking was a cause  
4       of lung cancer.

5               You would agree that the position of  
6       the Council was more research needed to be done  
7       on that very basic question.

8               MR. KLUGMAN:  Objection to the form.

9               MR. KRISTAL:  In 1994.

10              MR. KLUGMAN:  Objection to the form,  
11       Mr. Kristal, and because you are pursuing this, I  
12       will make the objection.  When you say "position"  
13       I don't know as Mr. Zahn seems to understand, you  
14       are talking about what views did the Council  
15       hold, and I think that is a difficult question to  
16       answer, given the fact that there are a lot of  
17       people, or whether you are talking about some  
18       stated position.  I think they are two very  
19       different things, and I think the question is  
20       ambiguous for that reason.

21              Q.    The public position of the Council for

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1 Tobacco Research in 1994 was that we don't know  
2 whether or not smoking causes lung cancer; isn't  
3 that true?

4 MR. KLUGMAN: Objection to the form. I  
5 wish you wouldn't ask him leading questions.  
6 Just ask him questions.

7 A. Well, you could almost break that down  
8 to we don't know what causes cancer.

9 Q. You are answering the question with a  
10 question.

11 A. Well, let me --

12 MR. KLUGMAN: Just --

13 THE WITNESS: Well, let me finish. If  
14 we don't know the cause of cancer generally, do  
15 we know the cause of lung cancer, liver cancer?

16 Let me add to that, you know, cancer is  
17 not one disease. It is a number of diseases, but  
18 I would say the Council continued to provide  
19 funds because it did not know what was the cause  
20 of cancer.

21 It continued to support researchers.

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1 Now, why it did it? Because it had been  
2 continuing throughout its existence to support a  
3 research program into smoking and disease and  
4 health, they sound contradictory, and it just  
5 never stopped, because of all these questions  
6 that still remain out there.

7 Are you saying we have to get to the  
8 last, the crossing of the last T and the dotting  
9 of the last I? I don't know. I'm not qualified  
10 to say that. I'm not a scientist.

11 Q. Are you done?

12 A. Yes.

13 MR. KRISTAL: I move to strike the  
14 nonresponsive portions of that answer.

15 Q. Did the Council for Tobacco Research at  
16 any point in time make any public statement that  
17 smoking has been determined to be a cause of lung  
18 cancer at any point in time up until you  
19 retired?

20 A. No.

21 Q. Did the Council for Tobacco Research

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1 ever take a public position that, up until the  
2 time you retired, that smoking caused any  
3 disease?

4 A. Not that I am aware of, no.

5 Q. Was the public position of the Council  
6 for Tobacco Research, as of the time you retired,  
7 that more research needed to be done to determine  
8 whether smoking caused lung cancer?

9 MR. KLUGMAN: Objection to the form.

10 A. Yes, because it continued to provide  
11 funds for the research.

12 Q. And was the public position of the  
13 Council for Tobacco Research as of the time that  
14 you retired that more research needed to be done  
15 to determine whether smoking caused any disease?

16 MR. KLUGMAN: Objection. You responded  
17 to my last objection. When you say public  
18 position, do you mean was it stated, which is how  
19 I understand it?

20 MR. KRISTAL: That's right.

21 MR. KLUGMAN: Public position, was it

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1 state to do the public?

2 MR. KRISTAL: That's right.

3 A. I don't think the Council ever stated  
4 it as such, that is publicly or any other way  
5 that I know of.

6 As I mentioned before, I had forgotten  
7 completely about this thing, but I see the reason  
8 for it. It was an anniversary type of thing.

9 No, the Council had not taken a public  
10 position for a number of years on smoking and  
11 disease. I have not issued a release on it or  
12 anything like that.

13 Q. Fair to say --

14 A. -- that I can remember.

15 Q. Fair to say that the operating  
16 position, the position under which the Council  
17 for Tobacco Research operated up through the time  
18 you retired, is that we don't know whether  
19 smoking causes any disease?

20 MR. KLUGMAN: Objection to the form.

21 A. I don't know what you mean by an

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1 operating position. It continued from day one to  
2 today, I guess.

3 As I say, I keep having to repeat, its  
4 operating position was if, I'm not sure I  
5 understand your phrase, was to support research,  
6 and it continued to do that throughout.

7 Q. Would you agree there is a difference  
8 between supporting research as to whether smoking  
9 causes lung cancer as a question as opposed to  
10 what are the causes of cancer?

11 MR. KLUGMAN: Objection to the form.

12 A. I don't understand your question.

13 Q. Sure. You said earlier that, in your  
14 opinion, a number, 90 percent you said, of  
15 smokers don't get cancer and why do they get  
16 cancer, that kind of thing.

17 My question is: Is there a distinction  
18 between the Council for Tobacco Research's  
19 position on whether smoking causes lung cancer as  
20 opposed to what are all the causes of lung  
21 cancer? There is a difference in those two

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1 questions, is there not?

2 MR. KLUGMAN: Objection to the form.

3 A. Yes. Yes, I think so.

4 Q. With respect to the first question,  
5 whether smoking causes lung cancer, up through  
6 1994, when you retired, that was always deemed by  
7 the Council for Tobacco Research to be an  
8 unresolved question.

9 That's the point I'm trying to ask.

10 MR. KLUGMAN: Now we're not talking  
11 about publicly positions, we are talking about  
12 what unnamed people believed.

13 MR. KRISTAL: Right.

14 MR. KLUGMAN: What a corporation for  
15 whom various people work believed. Objection to  
16 form.

17 A. It continued to fund scientists. I  
18 mean were they just throwing the money out?

19 Q. So I take it from your answer that the  
20 position was that question, whether smoking  
21 causes lung cancer is not answered.

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1 MR. KLUGMAN: Same objection. Vague  
2 and ambiguous, and if it means what I think it  
3 means, this witness has no foundation upon which  
4 to answer it.

5 A. It is hard for me to say yes or no. I  
6 ask you to look at a lot of research that was  
7 funded, which was basic research, and basic  
8 research, well, you probably know what it is as  
9 well as I do or better.

10 Before you can go on to determining  
11 something in science, you have to build up a  
12 store of information that will enable you to get  
13 to that particular stage.

14 And the Council and many scientists  
15 felt that this background of basic but very  
16 important evidence was lacking in certain areas.

17 And so a lot of the money went into  
18 that particular kind of research. It had nothing  
19 to do with tobacco at the time, but it may have  
20 had a lot to do with further understanding of  
21 cancer in general, and specific cancers would

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1 follow from that, and for heart disease and a lot  
2 of other ailments

3 So, as I say, I just cannot say yes or  
4 no, because it is not a black and white answer,  
5 as it is not in many ways a black and white  
6 situation.

7 Q. Now, when you said in the context of  
8 that answer, the Council believed that there was  
9 certain research lacking, something to that  
10 effect?

11 A. Well, the Council, the Scientific  
12 Advisory Board.

13 Q. Is that what you meant when you say  
14 "the Council"?

15 A. Well, yes, the Council, the lay people  
16 who -- the lay people from the companies that  
17 provided the funds had nothing to do with it, but  
18 they were, the board of directors, no, they are  
19 not the ones who said this. And when I say the  
20 Council, I meant the scientists on the Council.

21 Q. Did you generate any public relations

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1 statements on behalf of CTR in the 1990's?

2 A. In the 1990's?

3 Q. Yes.

4 A. All I can recall would be just on the  
5 annual report.

6 Q. Now, your personal opinion, up until  
7 the time you retired, was that you didn't know  
8 whether smoking caused any disease; is that fair  
9 to say?

10 MR. KLUGMAN: Objection to the form. I  
11 don't know what his personal opinion has to do  
12 with it. But go ahead and ask a few questions  
13 about that, if you want.

14 A. Oh, I believed that smoking did have  
15 something to do with it, obviously. There was an  
16 overwhelming amount of evidence, but was it the  
17 final answer? I don't know.

18 Q. Let me show you your deposition from  
19 1986 in the Cippolone case.

20 Now, the Cippolone case was the first  
21 time you had been deposed?

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1 A. Yes.

2 Q. You were deposed, do you recall, for  
3 three days in December of 1986?

4 A. Gee, I thought it was three months.

5 Q. Only felt like three months. Right.  
6 Let me show you pages 418 and 419 of your  
7 deposition.

8 MR. KLUGMAN: Pile of papers over there  
9 looks like three months, too, that was before the  
10 days of the Min-U-Script.

11 Q. On page 418, we'll have to read this  
12 together:

13 "Question: Have you ever held a belief  
14 as to whether or not cigarette smoking caused  
15 disease in human beings?" Do you see that?

16 A. Yes. Yes. I see that.

17 Q. There was an objection and your answer  
18 was:

19 "It may and it may not."

20 You see that?

21 A. Yes.

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1 Q. Then the question is: "That is your  
2 opinion?"

3 Do you see that?

4 A. Yes.

5 Q. And then you stated: "I don't know, I  
6 am not qualified certainly to speak as a  
7 physician or a scientist."

8 Do you understand that?

9 A. Yes.

10 Q. And then the question:

11 "I understand that, sir. I am just  
12 attempting to ascertain what your opinion is in  
13 that regard."

14 And your answer was: "I do not know."

15 Question: "You don't know what your  
16 opinion is?" That is what I am trying to find  
17 out, sir, that's all I'm trying to find out what  
18 your opinion is."

19 And your answer was -- why don't you  
20 read that?

21 A. "I do not know whether smoking causes

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1 disease."

2 Q. Now, that was December of 1986,  
3 correct?

4 MR. KLUGMAN: Excuse me, Mr. Kristal,  
5 could I see the few pages on either side of that,  
6 and you can go on and I'll take a look at it.

7 Q. Sure. Was that testimony truthful in  
8 1986, I do not know what causes?

9 A. I believe so.

10 Q. Did that opinion at some point in time  
11 change?

12 A. To a degree.

13 Q. And you would agree that that opinion  
14 changed in around 1994, correct?

15 MR. KLUGMAN: Objection to the form.

16 A. I don't know when it did, but it had  
17 certainly been, I would guess, shifting a bit  
18 each year through the years. I can't give you a  
19 time period.

20 Q. Well, your current belief, your current  
21 opinion is that smoking causes lung cancer,

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1 correct?

2 MR. KLUGMAN: I couldn't hear that,  
3 Mr. Kristal.

4 MR. KRISTAL: Smoking causes lung  
5 cancer, is that right, Mr. Zahn?

6 MR. KLUGMAN: Objection to the form. I  
7 think he has already, in effect, answered this  
8 question.

9 A. I would have to say yes but. Do you  
10 want me to answer what the but would lead into?

11 Q. No.

12 MR. KLUGMAN: Well, you determine,  
13 Mr. Zahn, whether you need to do that to make it  
14 a complete answer. It is up to you, not  
15 Mr. Kristal.

16 A. I still wonder what causes the lung  
17 cancer in the 90 percent of smokers who do not  
18 get the disease.

19 Q. Well, there can be many cancers of lung  
20 cancer, correct?

21 A. That's correct.

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1 Q. Is smoking one of them?

2 MR. KLUGMAN: Objection to form.

3 A. It could be in certain susceptible  
4 people.

5 Q. Does smoking cause emphysema?

6 MR. KLUGMAN: Objection to the form.  
7 Go ahead.

8 A. It could in certain susceptible people.

9 Q. Does smoking cause cardiovascular  
10 disease?.

11 MR. KLUGMAN: Objection to the form.

12 A. I guess in certain susceptible --

13 MR. KLUGMAN: Let me just make it  
14 clear, Mr. Kristal, you are asking him for his  
15 views today?

16 MR. KRISTAL: That's correct.

17 MR. KLUGMAN: Again, he is not here as  
18 an expert. I don't see the relevance of it, but  
19 go ahead and answer the questions, as long as we  
20 don't spend all our time on it. Go ahead,  
21 Mr. Zahn.

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1 A. In certain susceptible persons.

2 Q. Now, let me show you your testimony  
3 from just a couple of months ago. In May of  
4 1998, you were deposed, correct, in the  
5 Commonwealth of Massachusetts versus Philip  
6 Morris, et al., you remember that?..

7 A. Yeah, I think so.

8 Q. Let me show you on page 203, 204, 205.  
9 Page 203 from May 28, 1998, line 17.

10 "Mr. Zahn, do you believe that smoking  
11 causes disease in humans?"

12 And then your lawyer says: "Does he  
13 now believe that?"

14 And the lawyer said: "Yes."

15 Do you see that?

16 A. Yes.

17 Q. What was your answer to the question do  
18 you believe that smoking causes disease in  
19 humans?

20 A. Yes.

21 Q. Then the question was:

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1 "Do you have an idea which diseases  
2 you believe that smoking causes?"

3 And why don't you read your answer.

4 A. I'm looking for --

5 MR. KLUGMAN: I'm not clear. Is this  
6 impeachment? I mean we've got this deposition  
7 transcript. I don't know why we need to clutter  
8 this record with it, Mr. Kristal. Are you  
9 impeaching him with this?

10 MR. KRISTAL: Why don't you read the  
11 answer?

12 A. The question is what, line 25 there, do  
13 you have an idea of which diseases you believe  
14 that smoking, is that what you just asked?

15 Q. Yes.

16 A. I can't say yes or no. Yes. I believe  
17 smoking is related to lung cancer strongly, but  
18 not to all lung cancers. In fact, as you know  
19 probably as well as I that perhaps 90 percent of  
20 lung cancers are not related to smoking or 90  
21 percent of smokers do not get lung cancer. But

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1       there is no doubt from the available evidence  
2       now, the tremendous mass of it related to  
3       emphysema, to certain heart disease, related to  
4       pancreatic disease, may be certainly  
5       inferentially related to a number of other  
6       ailments. It appears that it is really not a  
7       good thing physically.

8               Obviously a lot of people get something  
9       out of tobacco, the nicotine, the  
10       pharmacologically active agent. Yes. I believe  
11       those things.

12              Q.    Okay. So in 1998, do you still believe  
13       what you said in May, what you just read?

14              A.    Well, I think I said the same thing  
15       with perhaps a slight shift or a little  
16       embellishment.

17              Q.    But you believe as you sit here today  
18       smoking causes lung cancer, emphysema, certain  
19       heart disease and probably related to pancreatic  
20       disease.

21              MR. KLUGMAN:  Objection to the form.

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1 That's not what his testimony is.

2 A. In certain susceptible individuals.

3 Q. And then on page 205, you were asked  
4 about when did you first formulate that belief.

5 A. Where is 205.

6 Q. On line 11 you said: "You never know  
7 these things, because there are still on many  
8 complex factors involved. I began to feel  
9 certain in the last five years or so, the last  
10 four, with everything I have been reading, some  
11 of the journals I still continue to see and,  
12 certainly, the newspaper stories, not all of  
13 which I believe as to accuracy, but, certainly,  
14 there has been enough around and enough publicity  
15 to make me feel that way."

16 Do you see that?

17 A. Yes.

18 Q. Fair to say then that you began to feel  
19 certain about your opinions in the last four to  
20 five years?

21 A. I would have to say so.

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1 Q. And that is right around the time you  
2 retired, correct?

3 A. Yeah. Yes.

4 Q. What is it that occurred in the last  
5 four to five years that has led you to your  
6 current opinion that didn't exist before you  
7 retired?

8 A. Well, you just read what it was.

9 Q. What was it?

10 A. Some of the journals I still continue  
11 to see, certainly the newspaper stories, et  
12 cetera, there has been enough around and enough  
13 publicity to make me feel that way. And even  
14 before that, I had said something similar. Where  
15 is it? Yeah, the tremendous mass of available  
16 evidence.

17 Q. So something happened in 1994 and  
18 thereafter that led to some sort of critical mass  
19 in your belief as to whether smoking causes  
20 certain disease?

21 MR. KLUGMAN: Objection to form. It is

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1 leading, it is even argumentative, it is  
2 improper.

3 A. Mr. Kristal, that is an impossible  
4 question to answer.

5 Q. Well, you said that there were certain  
6 things you read, right, in newspapers and in  
7 published articles after 1994, right, isn't that  
8 what your answer was?

9 MR. KLUGMAN: Objection to the form.

10 A. Let me put it this way: Did a switch  
11 suddenly get thrown, no, you don't expect that to  
12 happen to you or to anyone else.

13 You can't say, oh, it started with  
14 this.

15 What you could say about a life event,  
16 a major life event, you can say, yes, this was  
17 it.

18 No. This was just, it could have  
19 started ten years ago, I don't know. But,  
20 certainly, in the last several years, as I have  
21 said here, I began to realize, gee, there is a

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1 hell of a lot, I always knew there was a lot out  
2 there. I'm talking about evidence, some of which  
3 I, in my ignorance as a layman, did not believe  
4 for various reasons, which I thought were valid,  
5 but there is such a huge mass out there.

6 And, again, I say I don't know when it  
7 began, but I suddenly started thinking, yeah,  
8 there's got to be something out there, there is  
9 just too much out there for there not to be  
10 something.

11 But I didn't believe then and I don't  
12 believe now that it is a mass application of the  
13 data, because the data do not support that.  
14 Never mind what the publicity and the propaganda  
15 say.

16 I still want know why the great  
17 majority of smokers don't get it.

18 Q. Did the hell of a lot of evidence that  
19 you say now exists regarding smoking and disease  
20 exist before you retired?

21 MR. KLUGMAN: Objection to the form.

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1           A.    Oh, there was a lot there, absolutely,  
2   great amount.

3           Q.    But at no point before you retired, did  
4   you believe that smoking caused disease; is that  
5   correct?

6           MR. KLUGMAN:  Objection to the form.

7           A.    You know, I don't know how many times  
8   you keep pounding me with that.  It may have  
9   started ten years ago, but I was either unaware  
10   of it, or shoved it aside or didn't believe it or  
11   didn't even know it was there.

12          Q.    I'm not asking you whether you were  
13   aware of it or not, but in 1986, when you  
14   testified in the Cippolone case, that is 12 years  
15   ago, your opinion was you don't know whether  
16   smoking caused disease, right, we just read  
17   that?

18          A.    Well, I still don't know.  How am I  
19   supposed to know, any more than you are supposed  
20   to know?

21          Q.    Here is my question:  Do you have an

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1 opinion as you sit here today whether smoking  
2 causes any disease?

3 A. I will tell you again, probably for the  
4 20th time, yes, in certain susceptible  
5 individuals.

6 Q. You didn't say that in 1986, correct,  
7 you said I don't know whether smoking causes  
8 disease.

9 MR. KLUGMAN: Objection.

10 A. And at that time, that's exactly what I  
11 believed.

12 Q. So something occurred between 1986,  
13 when you were deposed in the Cippolone case, and  
14 around the time that you retired, that made you  
15 change your opinion; is that a fair statement?

16 MR. KLUGMAN: Objection to the form.

17 A. No. It is not a fair statement. I  
18 don't know what occurred. There was know  
19 epiphany.

20 Q. Right.

21 A. I didn't awaken and see a flash of

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1 light and somebody said, Zahn, you know smoking  
2 causes lung cancer. You must believe that.

3 Q. Uh-huh. Right.

4 A. It didn't happen, and it doesn't happen  
5 to anybody that way, or very few people. Was it  
6 a gradual accumulation? I have no idea.

7 Q. Now, you quit smoking on your 62nd  
8 birthday in 1985?

9 A. That was 13 years ago. Yes, I did.

10 Q. And your wife also quit on that day?

11 A. Yes.

12 Q. Before you quit, had you or your wife  
13 ever been advised by a doctor to quit?

14 MR. KLUGMAN: Mr. Kristal, can you tell  
15 me what this question has to do with any issue in  
16 this lawsuit?

17 MR. KRISTAL: Other than the fact that  
18 it was asked ever every single one might have  
19 clients.

20 MR. KLUGMAN: I can understand what it  
21 has to do with your clients. But that's not

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1 really the issue.

2 MR. KRISTAL: You don't have to  
3 understand the issue that I'm asking. You can  
4 assert a privilege and instruct him not to  
5 answer.

6 MR. KLUGMAN: He is a third party. I  
7 think it's intrusive. It is not privileged. Go  
8 ahead, Mr. Zahn, but I ask that you abbreviate  
9 this.

10 A. I don't remember. Well, maybe a number  
11 of years ago, one physician to whom I went for an  
12 annual checkup suggested, nothing ever strong,  
13 because I've always been pretty healthy. No, I  
14 don't think so.

15 Q. Okay. Had anybody ever advised you to  
16 quit before you actually quit?

17 A. What do you mean by "anybody"?

18 Q. Anybody, your children, your wife, your  
19 friends?

20 A. A number of physicians I had met  
21 through the years at meetings.

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1 Q. Did you ever try to quit before you  
2 quit on your sixty-second birthday?

3 A. I don't think so. I can't remember.

4 Q. Okay. Do your daughters smoke?

5 A. No.

6 Q. Have they ever smoked?

7 A. My -- my younger one may have. But she  
8 has not been a smoker for, I don't know how long.

9 Q. What time frame was it when your  
10 daughters were teenagers, 12, 13, 14, 15, was  
11 that in the seventies?

12 A. Well, my older is, let's see, she is  
13 45, 46. My younger one will be 45. The younger,  
14 the last day of this month, December 31. And it  
15 had to be, for the younger one --

16 Q. So your daughters were born in the  
17 early 1950's, '51, '52, '53?

18 A. No. '53 and '54. They are 21 months  
19 apart. That's why it would have been two years.  
20 The older one was born in March of '43.

21 MR. KLUGMAN: '53.

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1 THE WITNESS: No, I'm sorry, '53. I  
2 was married in 1948.

3 Q. So when you made the statement in  
4 Exhibit 1, it is my understanding your daughters  
5 were 15 and 16 years old?

6 MR. KLUGMAN: I thought that was 1979.

7 MR. KRISTAL: I think you have your  
8 addition screwed up, or subtraction, whichever  
9 way you did it.

10 Q. That's right. If your daughters had  
11 come to you in 1968 and '69 and asked you if it  
12 was okay for them to have smoked, what would you  
13 have said?

14 MR. KLUGMAN: Objection to the form.

15 A. I undoubtedly would have said, no,  
16 please don't.

17 Q. Why?

18 A. They are coffin nails. Didn't you ever  
19 hear that?

20 Q. What does that mean?

21 A. They kill you.

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1 Q. Did you believe that at that time?

2 A. No. I did not.

3 Q. Well, you believed it enough to tell  
4 your daughters about it, right?

5 A. I didn't tell them, because they didn't  
6 come to me. The older one never did smoke, and  
7 the younger one smoked, but not at home. I  
8 didn't know she had until later.

9 MR. KLUGMAN: I didn't have a chance to  
10 say it, Mr. Kristal, but I think that was very  
11 unfair. You asked him a hypothetical question  
12 and he answered it and you took that is that as a  
13 statement of fact.

14 Q. In 1969, you believed that cigarettes  
15 were coffin nails, you believed they would kill  
16 you. Did you just say that?

17 A. No.

18 Q. You didn't say that?

19 A. I told you I didn't believe it, but I  
20 would have told my daughters not to smoke,  
21 because I don't believe it is a healthy habit, a

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1 good habit.

2 Q. Okay. So you believed in the mid  
3 1960's, '68, '69, that cigarettes were not  
4 healthy?

5 MR. KLUGMAN: Objection to the form.

6 A. In a general sense, yes.

7 Q. And what was the unhealth problem with  
8 cigarettes in that time frame?

9 A. Well, I don't know, it just didn't seem  
10 like a healthy habit. People have been saying  
11 that ever since cigarette smoking became  
12 popular. And they say the same thing about, of  
13 course, alcohol. And I like to drink. I do  
14 drink wine.

15 Q. You said cigarettes could tell you,  
16 that was your belief at that point?

17 MR. KLUGMAN: No. He didn't say that.

18 A. No. I didn't say that. I said that's  
19 what was meant by cigarettes are coffin nails.

20 Q. You didn't believe that?

21 A. No.

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1 Q. Why would you tell your daughters  
2 that?

3 A. Because I didn't want them to smoke,  
4 nor did I want them to drink, nor did I want them  
5 to take drugs.

6 Q. Is there a problem with 12, 13, 14  
7 year-olds smoking?

8 MR. KLUGMAN: Objection to the form.  
9 Vague, ambiguous, I'm sure Mr. Zahn's opinion on  
10 that has no relevance.

11 A. There are lots of problems with  
12 teenagers engaging in habits when they are not  
13 old enough to decide properly.

14 Q. And what is a decision that a teenager  
15 is not old enough to decide with respect to  
16 smoking?

17 A. They are immature. They have no  
18 experience, no awareness.

19 Q. What is the decision they have to make?

20 A. Oh, go talk to a sociologist, please,  
21 or a school psychologist. I know what I did with

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1 my children. You may tell your twelve year old  
2 daughter, if you want to smoke, go ahead, if you  
3 want to drink, go ahead, you want to try  
4 marijuana, go ahead.

5 Q. My question to you, though, is: What  
6 was the decision that had to be made that  
7 teenagers were not able to make?

8 A. I just said because they were immature,  
9 they were teenagers, they did not have what I  
10 considered good sense. They didn't have enough  
11 life experience, to use that corny phrase.

12 Q. Had you ever seen any tobacco  
13 manufacturers' studies regarding the demographics  
14 of the age of people who were smoking?

15 A. No.

16 Q. Did you ever ask that question, to see  
17 such demographics?

18 A. Why would I?

19 Q. I don't know. Did you ever ask?

20 A. No.

21 MR. KLUGMAN: Just try to answer his

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1 questions, best you can Mr. Zahn.

2 Q. Did you have any concern as to whether  
3 or not the majority of smokers were starting at  
4 an age when they were young teenagers?

5 MR. KLUGMAN: Objection to form.

6 A. I didn't know that was so, if it was  
7 so.

8 Q. If it was so, would that be of concern  
9 to you?

10 MR. KLUGMAN: Objection to the form.

11 A. You could ask me if they were not  
12 eating enough good food, they didn't have clothes  
13 to go to school, yeah, that would be a question  
14 that would bother me. Why don't you ask me about  
15 all those other things? I never thought about  
16 it.

17 Q. Well, you were representing as the  
18 public relations counsel to an English Tobacco  
19 Industry group?

20 A. What do you mean English.

21 Q. Tobacco industry group.

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1 A. Yes.

2 Q. You gave no thought to who was smoking  
3 cigarettes at that time?

4 MR. KLUGMAN: Objection to the form.

5 A. I had nothing to do with who smoked or  
6 how they sold cigarettes or how they promoted or  
7 marketed their product.

8 My client was the Council for Tobacco  
9 Research. And my belief was that it was a  
10 scientific organization which did not sell  
11 cigarettes, which did not market them, had  
12 nothing to do with advertising or promotion.

13 Q. If lay people were guiding the  
14 scientist's actions at the CTR in the conduct of  
15 the research program, would that --

16 A. I'm sorry.

17 Q. If lay people were guiding the  
18 scientific research programs of the CTR, would  
19 that be contrary to the purpose of CTR and the  
20 reason it was set up?

21 MR. KLUGMAN: Objection to the form.

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1 particularly the use of guiding, it is totally  
2 vague and ambiguous. Also object to the  
3 hypothetical. Go ahead.

4 A. You mean, you are throwing these --

5 MR. KLUGMAN: Also lack of foundation.  
6 Excuse me, Mr. Zahn.

7 A. -- one of these "if" questions. I  
8 can't answer that. It is like saying -- well, I  
9 don't know what. But it seems a little odd to  
10 me.

11 Q. If lawyers were running CTR, would that  
12 be consistent or inconsistent with your  
13 understanding of CTR's purpose?

14 MR. KLUGMAN: Objection to the form.  
15 Vague and ambiguous.

16 A. Well, to my mind, to my understanding,  
17 lawyers were not running it, so I, you know,  
18 can't answer that.

19 Q. My question is: If they were running  
20 it, would that be consistent or inconsistent of  
21 your understanding of CTR's purpose?

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1 MR. KLUGMAN: Excuse me, Mr. Zahn.  
2 Objection to the form, vague and ambiguous. I'm  
3 sorry, Mr. Zahn.

4 THE WITNESS: Shall I answer?

5 MR. KLUGMAN: Yes, I'm sorry. Go  
6 ahead?

7 A. You want to repeat that, if lawyers  
8 were running --

9 Q. Right. CTR, would that be consistent or  
10 inconsistent with your understanding of CTR's  
11 purpose?

12 MR. KLUGMAN: Same objection.

13 A. Well, I would say that it would be  
14 something that I was totally unaware of, if that  
15 were the case, which I do not believe was the  
16 case.

17 Q. My question is whether it would be  
18 consistent or inconsistent with your  
19 understanding of CTR's purpose?

20 A. It would be inconsistent.

21 MR. KLUGMAN: Objection to the form of

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1 the last question.

2 MR. KRISTAL: Let me show you what I  
3 will mark as Exhibit 2 which is a letter from  
4 Mr. Hoyt to Mr. Stevens dated February 15, 1972.

5 MR. KLUGMAN: Hold on before you show  
6 it to him.

7 (Whereupon, Zahn Deposition  
8 Exhibit No. 2, letter dated February 15, 1972  
9 from Hoyt to Stevens, marked.)

10 MR. KLUGMAN: I guess I would ask you,  
11 Mr. Kristal, is this a privileged document?

12 MR. KRISTAL: I don't know.

13 MR. KLUGMAN: Where did you get it,  
14 Mr. Kristal?

15 MR. KRISTAL: I got documents I intend  
16 to use from a host of sources. Some were sent to  
17 me by co-counsel.

18 MR. KLUGMAN: Until the judge ruled  
19 last Thursday, you knew that you couldn't use  
20 privileged documents in the Ohio deposition?

21 MR. KRISTAL: Who said? Who said I

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1       couldn't? Who said they were privileged? And  
2       what has that got to do with today?

3               MR. KLUGMAN: What it has to do with  
4       today is it would go more smoothly if we knew  
5       where you got the documents from.

6               MR. KRISTAL: You asked me the  
7       question. Most of the documents, I got off of  
8       the Internet, both from the tobacco company's web  
9       site and from, I'm sure you know, a million web  
10      sites, I got some from co-counsel. I can't  
11      answer the question. I'm trying to be evasive.

12              MR. KLUGMAN: I understand. Off the  
13      record a second.

14              VIDEO OPERATOR: Off the record, the  
15      time is 10:14.

16              (Discussion off the record.)

17              MR. PADMANABHAN: I'm Ramm Padmanabhan,  
18      from the law firm of Kirkland & Ellis. I'm here  
19      on behalf of Brown & Williamson.

20              And I want to state for the record my  
21      understanding of the judge's order in the Ohio

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1 Iron Workers case is that plaintiffs may use and  
2 ask questions about documents that are publicly  
3 available, but to which the defendants claim  
4 privilege with the understanding that, first, the  
5 witness may answer those questions and allowing  
6 the witness to answer would not be a waiver on  
7 the part of any defendant; and, second, that the  
8 documents themselves and any questioning on the  
9 documents will be placed under seal.

10 That's all I have. Mr. Kristal, I  
11 don't know if you have additional comments.

12 MR. KRISTAL: I agree with that. I  
13 guess we can hash out later who is asserting what  
14 privilege and over which defendants that the  
15 privilege occurs, but we can do that on a  
16 document-per-document basis. You follow what I  
17 am saying?

18 MR. PADMANABHAN: We'll try to make that  
19 clear when that comes up.

20 MR. KLUGMAN: While we were off the  
21 record, I determined that this document was

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1 produced, and on that ways basis, the witness is  
2 taking a look at it and you can ask questions.

3 (Discussion off the record.)

4 VIDEO OPERATOR: Back on the video  
5 record, the time is 10:34.

6 THE WITNESS: I have read this,  
7 Mr. Kristal.

8 Q. All right. Now, Mr. Hoyt is listed  
9 here on Exhibit 2 as executive vice-president,  
10 and that would be executive vice-president of  
11 CTR, correct?

12 A. Yes.

13 Q. The letter is to Mr. Stevens, who you  
14 knew for many years?

15 A. Yes.

16 Q. General counsel at Lorillard; is that  
17 correct?

18 A. Yes.

19 Q. Okay. Now, this references a letter  
20 that Mr. Stevens had sent to Mr. Hoyt, which  
21 apparently contained a reference to a Lorillard

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1       proposal with respect to CTR funded research.

2               Do you see that in the first, second  
3       paragraph?

4               A.    Yes.

5               Q.    Now, the next to the last paragraph is  
6       what I want to ask you a question about.

7               Mr. Hoyt writes to Mr. Stevens: "As  
8       regards a proposal by a tobacco company,  
9       concerning the conduct of the scientific program  
10      of the Council, we think you will agree that the  
11      records should not show anything which would  
12      imply or could be erroneously interpreted to  
13      infer that lay people are guiding the scientists'  
14      actions in the conduct of the research program."

15              Do you see that paragraph I just read?

16              A.    Yes.

17              Q.    Was that your understanding that there  
18      was a concern about people believing that lay  
19      people were guiding the scientists' actions in  
20      the conduct of the research program at CTR?

21              MR. KLUGMAN:  Objection to the form.

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1           A.    I was unaware of any such concern or  
2 any such matter as this refers to.

3           Q.    You were a member of a committee, were  
4 you not, whose purpose it was to come up with  
5 ideas for research for CTR to fund?

6           MR. KLUGMAN:  Objection to the form.

7           A.    I believe so, yes.

8           Q.    That was called the Research Liaison  
9 Committee, correct?

10          A.    Yes.

11          Q.    Let me show you two exhibits which was  
12 just before you came on board with Hill &  
13 Knowlton and worked on the CTR account.

14                It is Exhibit 11,550, which is dated  
15 December 15, 1953, and it is entitled to  
16 background material on the cigarette industry  
17 client, and it is written by Bert C. Goss,  
18 G-o-s-s, and let me also give you Exhibit 11,622,  
19 which is entitled Tobacco Industry Research  
20 Committee Confidential Report, Tobacco Industry  
21 Research Committee meeting, October 19, 1954.

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1 Now, both of these were about a year  
2 and a half or so before, well, the first one is  
3 about a year and a half, the second one is about  
4 a year before you joined Hill & Knowlton; is that  
5 correct?

6 A. I think I joined Hill & Knowlton, well,  
7 it was in 1955. Whether it was early or not, I  
8 really don't remember.

9 Q. Okay.

10 A. But it was in 1955.

11 Q. Now, on Exhibit 11,550, Mr. Goss writes  
12 in the beginning:

13 "The following information was given  
14 us by the presidents of the leading tobacco  
15 companies at the Hotel Plaza this morning."

16 Now, you were aware that there had been  
17 a meeting of the leading tobacco companies at the  
18 Hotel Plaza before you joined Hill & Knowlton  
19 that led to the formation of the Tobacco Industry  
20 Research Committee.

21 MR. KLUGMAN: Objection.

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1           A.    I had no knowledge of this before I  
2           went to work there, and I don't remember being  
3           told about this when I did go to work there.

4                    It may have happened, but I knew that  
5           they had begun talking about organizing a  
6           committee a year or so ago, before, whenever, and  
7           what the actual dates and details were, I just  
8           never knew.

9                    I don't remember knowing. I may have  
10          known at one time, but I certainly do not now.

11          Q.    But it was your understanding when you  
12          began to work for Hill & Knowlton, that at some  
13          point in time, the leading tobacco companies had  
14          gotten together and formed what was then known as  
15          the TIRC?

16          A.    Oh, yes. Absolutely, yes.

17          Q.    Did you ever work with Mr. Goss  
18          himself?

19          A.    Yes. He was -- I don't know what he  
20          was at this time, in 1953. He may have been  
21          executive vice-president. I think he was

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1 president though, as I last remember him, the  
2 years that I was there, and then he became  
3 chairman after John Hill died.

4 Q. When you say president and executive  
5 vice-president, you are talking of Hill &  
6 Knowlton?

7 A. Yes.

8 Q. On page two, under Roman Numeral III,  
9 the industry's position, let me read the last two  
10 paragraphs.

11 MR. KLUGMAN: I'm sorry. Page?

12 Q. Two, Roman numeral III, the industry's  
13 position.

14 "They felt that they should be sponsor  
15 a public relations campaign which is positive in  
16 nature and entirely pro cigarettes. They are  
17 confident they can supply us with comprehensive  
18 and authoritative scientific material which  
19 completely refutes the health charges."

20 Do you see that paragraph?

21 A. Yes.

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1 Q. When you came to work on the TIRC  
2 account in 1955, was it your understanding that  
3 that was the industry's position with respect to  
4 the purpose of the TIRC?

5 MR. KLUGMAN: Objection to form.

6 A. In 1955, certainly, our efforts on  
7 behalf of, Hill & Knowlton's efforts on behalf of  
8 the industry, were what a public relations firm,  
9 a law firm, always calls positive.

10 You want to stress the positive nature  
11 of whatever information that you have, that you  
12 believe is valid and true. And you are certainly  
13 going to conduct a campaign that is in behalf of  
14 your client and not against it.

15 Otherwise, you would not be there long  
16 or be there at all.

17 Of course, you are going to put your  
18 best foot forward, and you are going to talk  
19 about it.

20 Q. Now, the next paragraph under "industry  
21 position" from Exhibit 11,550, reads:

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1            "They are also emphatic in saying that  
2            the entire activity is a long-term continuing  
3            program, since they feel that the problem is one  
4            of promoting cigarettes and protecting them from  
5            these and other attacks that may be expected in  
6            the future. Each of the company presidents  
7            attending emphasized the fact that they  
8            considered the program to be a long-term one."

9            Was that your understanding when you  
10           were working on the account for Hill & Knowlton,  
11           that it was a long -- by understanding, I meant  
12           that it was going to be a long-term continuing  
13           program?

14           A. Yeah, that was my understanding, the  
15           program was not going to last a year or two or  
16           three. It was not a slightly touched up program  
17           or a lightly brushed over program, it was going  
18           to be a deep, committed program that was going to  
19           go on for however long it had to be run.

20           Q. Was it ever expressed to you, when you  
21           began working on the TIRC account or at any point

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1 in time when you worked on either the TIRC  
2 account or when it became known as CTR, that the  
3 industry felt, and I'm paraphrasing from the  
4 second paragraph here, that the problem is one of  
5 promoting cigarettes and protecting them from  
6 these and other attacks that may be expected in  
7 the future?

8 MR. KLUGMAN: Objection to the form.  
9 Go ahead and answer.

10 A. . No. I was never told we were promoting  
11 cigarettes. In fact, I was told the opposite.  
12 We don't have anything to do with selling  
13 cigarettes.

14 Q. Did you have an understanding that  
15 positions that you were -- strike that --  
16 positions that the CTR was taking would help  
17 promote the sale of cigarettes?

18 MR. KLUGMAN: Objection to the form.

19 A. If you mean if we tried to point out  
20 what, at that time were what a lot of people  
21 thought were inconsistencies in the evidence

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1     against smoking and the limited amount of the  
2     evidence at that time, if that is promoting  
3     cigarettes, fine.

4             We were promoting I thought, and still  
5     do, the fact that the evidence was really very,  
6     very small in amount at the time.

7             Q.    Okay. Now, in Exhibit 1, the press  
8     release from 1979, with the headline of the press  
9     release "tobacco research group says continued  
10    research needed to find causes of cancer and  
11    other major diseases."

12            Do you believe that assisted in the  
13    promotion of cigarettes?

14            MR. KLUGMAN:  Objection to the form.

15            A.    Mr. Kristal, I never promoted cigarette  
16    smoking. I never said, nor did Hill & Knowlton  
17    nor I when I was at Hill & Knowlton, say that  
18    smoking does not cause lung cancer or heart  
19    disease or any of this. Never did, and never  
20    believed it.

21            You could never say anything like that.

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1 because it wouldn't be true. You may think, you  
2 may say, well, yeah, something like this that, in  
3 effect, tries to portray your client's position,  
4 means that you are promoting cigarettes.

5 My client was the Council for Tobacco  
6 Research. The Council was not in the cigarette  
7 promotion business. It did not sell cigarettes.  
8 It was not a commercial undertaking.

9 So I would have to say, no, we were  
10 not, the Council was not, and I was not, for the  
11 Council, promoting cigarettes.

12 But you could say, well, if you are  
13 promoting something positive in regard to  
14 cigarettes, then you are, in effect, promoting  
15 cigarette smoking. You may believe that.

16 Q. Wasn't the CTR conducting research to  
17 build a foundation to prevent attacks on the  
18 industry?

19 MR. KLUGMAN: Objection to the form.

20 A. You mean in its research program, its  
21 sponsorship program?

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1 Q. Yes. It was trying to build a  
2 foundation of research to prevent attacks on  
3 cigarette smoking; wasn't that what it was  
4 doing?

5 MR. KLUGMAN: Objection to form.

6 A. No. It was building a -- not building,  
7 it was providing research to scientists to do  
8 research to present, to provide or attain, obtain  
9 evidence that would help the world of science, if  
10 you will, find out more about these diseases.

11 Q. How long did you know Dr. Little?

12 A. I knew him from 1955 until he died.

13 Q. Which was what year?

14 A. I don't recall. It was in the --

15 MR. KLUGMAN: I think it is '71.

16 A. -- I was going to say the early  
17 seventies.

18 Q. My point was you knew him a long time,  
19 because obviously could have died in '56.

20 A. No. I knew him a long time.

21 Q. Okay.

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1           A.    I just didn't remember. I thought it  
2           was the late sixties or early seventies, I wasn't  
3           sure.

4           Q.    He was the first Scientific Director of  
5           the CTR?

6           A.    Yes.

7           Q.    He was the head of the Scientific  
8           Advisory Board?

9           A.    I believe at one point, yes.

10          Q.    Let's look at this Exhibit 11,622,  
11          which are the minutes of the meeting of the  
12          Tobacco Institute Research Committee.

13                You see in attendance there are a  
14          number of members of the tobacco industry,  
15          someone from American Tobacco, Brown &  
16          Williamson, various tobacco growers, Lorillard,  
17          Reynolds, do you see that?

18          A.    Yes.

19          Q.    A couple of lawyers there?

20          A.    Uh-huh.

21          Q.    Right? And then Clarence, Dr. Clarence

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1 Cook Little is listed as Scientific Director of  
2 the Scientific Advisory Board, correct?

3 MR. KLUGMAN: Objection to the form.

4 A. Yes.

5 Q. And then there were three members of  
6 the firm you joined shortly thereafter, Hill &  
7 Knowlton were there, right?

8 A. Yes.

9 Q. And the second item reads: "Dr. Little  
10 was introduced. He traced the history of the  
11 Scientific Advisory Board from the time of its  
12 inception to date, described the problems it had  
13 faced and its present viewpoint. He declared  
14 that both he and the members of the board were  
15 aware of the attacks which had been made on  
16 tobacco for over 200 years and wished to build a  
17 foundation of research sufficiently strong to  
18 arrest continuing or future attacks."

19 Do you see that?

20 A. Yes.

21 Q. He never expressed that to you?

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1           A.    Not in the sense that you are inferring  
2           from these words here.

3           Q.    Okay.  It says here, does it not, it  
4           attributes to Dr. Little in these minutes of the  
5           meeting, that he wished to build a foundation of  
6           research sufficiently strong to arrest continuing  
7           or future attacks.  It says that, does it not?

8           A.    But again, you have had to know  
9           Dr. Little, a consummate scientist who was the  
10          head of what became known as the American Cancer  
11          Society, the man who brought the word "cancer"  
12          out of the dark corners, where people never  
13          looked at it or talked about it.

14          And if you want, I would be very happy  
15          to explain what he meant, if this is an exact  
16          description of what he said.  I can explain what  
17          he meant by it.

18          Q.    Were you done?

19          A.    Yes.

20               MR. KRISTAL: I move to strike the  
21          nonresponsive portions of that answer.

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1 Q. Did you ever, in your work for the TIRC  
2 or Council for Tobacco Research, ever suggest  
3 that certain scientific research be done?

4 A. Yes.

5 MR. KLUGMAN: Objection to the form.  
6 Go ahead.

7 A. Yes.

8 Q. When did you first do that?

9 A. I may have done it early on, when I was  
10 very ignorant about the whole subject, although I  
11 rather doubt it, but I know that after I became a  
12 consultant of CTR with my own company, I did make  
13 recommendations for certain research.

14 Q. And who did you make the  
15 recommendations to?

16 A. I made recommendations to CTR itself,  
17 and I made recommendations with the Research  
18 Liaison Committee.

19 I can't recall the exact name. They  
20 seem to, the names seem to have changed once or  
21 twice.

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1           And there was one point where I made a  
2       recommendation. I cannot remember the mechanism  
3       of it or whatever, but it was to Bill Smith who  
4       was the head of the, the president, chairman,  
5       whatever, of R.J. Reynolds, for a massive  
6       epidemiologic study.

7           Q. Now, other than some science courses  
8       you may have taken in college, you had no other  
9       formal training in science, is that correct?

10          A. That's right.

11          Q. What qualified you to make research  
12       suggestions to the CTR?

13          MR. KLUGMAN: Objection to the form.

14          A. Maybe gall, maybe an inflated ego, or  
15       maybe because I thought I was beginning to learn  
16       a little bit about the overall topic from the  
17       standpoint of a few other people at CTR or  
18       perhaps even any other organization had, and that  
19       was the fact that I was attending a number of  
20       scientific meetings and getting a marvelous  
21       education.

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1 Q. Now, some of the projects that you  
2 recommended be funded for research were not to  
3 study science, they were to defend the industry,  
4 were they not?

5 MR. KLUGMAN: Objection to the form.

6 A. I didn't look at it that way. I  
7 believe, I don't recall thinking of that. I just  
8 thought it was a way of looking at things that  
9 other people were not looking at, that related to  
10 smoking.

11 If I can give you an example, I would  
12 be happy to.

13 Q. Go ahead.

14 A. You may recall the Hammond/Horn  
15 American Cancer Society statistical study. Do  
16 you?

17 Well, a massive study sending out  
18 American Cancer Society volunteers to interview  
19 friends or relations, neighbors, et cetera, and  
20 then following these people periodically with  
21 these visits to see if they were -- well, getting

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1 their history of smoking, what they died of and  
2 so forth.

3 The first report of this study and  
4 subject of the reports also, followups, indicated  
5 that they found smoking to be related to the  
6 incidence of lung cancer, and yet a number of  
7 scientists were saying from the time the first  
8 report came out, that the study was flawed.

9 Aside from the fact that a study of  
10 this kind cannot prove causation, most  
11 epidemiologists and statisticians agree to that.

12 I know I had recommended a study, the  
13 one I had referred to before, that I proposed to  
14 Bill Smith at Reynolds, of a similar nature, but  
15 one that would try to cover all the bases that  
16 the Hammond/Horn thing did, but adding other  
17 aspects that would do away with the items that  
18 flawed the original one.

19 And I recall that I estimated even in  
20 those days for the study to be done properly,  
21 somebody would have to provide \$50 million. Now,

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1 I don't remember how or where I got that figure.

2 Q. Now, you have no training in  
3 epidemiology, correct?

4 A. None at all. I have one course given  
5 by Kyler Hammond. He did that for a group of  
6 scientists one year or one day or two days, I  
7 don't remember.

8 Q. And how many hours was that?

9 A. Oh, I can't recall.

10 Q. And --

11 A. But I am not an epidemiologist, and I  
12 never had training in it.

13 Q. What epidemiologist have you spoken  
14 with over the course of your career?

15 A. Probably dozens of them.

16 Q. And when you spoke to them, did you  
17 ever spoke to them about the Hammond/Horn  
18 report?

19 A. I may well have. I don't remember  
20 specifically, probably did.

21 Q. Dr. Hammond and Dr. Horn were well

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1 qualified scientists?

2 A. Oh, yes.

3 Q. What were their positions?

4 A. Dr. Hammond, he was a Ph.D., or SED,  
5 I'm not sure about that. He was, I think, head  
6 of statistics at the Cancer Society and I think  
7 Daniel Horn was his assistant, very qualified  
8 men, yes.

9 Q. And you knew how to devise a study that  
10 would correct their mistakes?

11 MR. KLUGMAN: Objection to the form.

12 A. No. Don't attribute to me your  
13 implication, please. No. I did not know.

14 Q. Let me show you Exhibit 2,339 which is  
15 dated April 6, 1972. It is a memo from you to  
16 Mr. Ramm, and he was head of CTR at that point,  
17 correct?

18 A. Yes.

19 Q. He was also a lawyer?

20 A. Yes.

21 Q. And copies went to Mr. Hoyt and

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1 Mr. Hockett?

2 A. Dr. Hockett.

3 Q. And the subject is "research project  
4 suggestions."

5 You see that?

6 A. Yes.

7 Q. Here is what you wrote. First of all,  
8 did you write this?

9 A. Yes. Obviously, it is on my  
10 stationery.

11 Q. "Here are some suggestions for  
12 consideration as research projects. Several are  
13 in the nature of defense projects. They are  
14 listed because they cover subjects that have  
15 become part of the literature as well as part of  
16 the effort to convince the public that tobacco  
17 causes nearly every ailment imaginable."

18 Do you see that?

19 A. Yes.

20 Q. And then you list some eight, nine  
21 different studies, you are suggesting to

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1 Mr. Ramm, correct?

2 A. Yes.

3 MR. KLUGMAN: Objection to the form.

4 Q. Well, isn't that correct?

5 A. Mr. Ramm, yes. As you say, he was a  
6 lawyer.

7 Q. And you were suggesting these nine  
8 different areas of research be done, correct?

9 MR. KLUGMAN: Now you got it right.

10 A. Yes.

11 Q. Were they ever, these subjects that you  
12 were suggesting, ever brought up in front of the  
13 Scientific Advisory Board?

14 A. I don't --

15 MR. KLUGMAN: Objection to the form.

16 A. I don't recall that they were.

17 Q. Were they ever --

18 A. Although I may have mentioned it or  
19 some of them in conversations with some of the  
20 advisors. I really don't know, but I don't  
21 recall any formal presentation of this memo or

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1 the subject of this memo or any part of it before  
2 the Advisory Board.

3 Q. Do you know if these suggestions were  
4 ever made to the Committee of Counsel?

5 A. I may have done it through the research  
6 group, the Research Liaison Committee, but I  
7 don't even remember that. I don't think I ever  
8 met with the Committee of Counsel. I can't  
9 recall ever having met with them when I brought  
10 this up.

11 Q. And the Committee of Counsel was a  
12 group of lawyers, was it not, from the various  
13 tobacco companies, hence the name?

14 MR. KLUGMAN: Objection to the form.

15 A. As I said, I'm familiar with the name,  
16 and that is an apt description of what it was,  
17 but I had nothing to do with that committee.

18 Q. Okay. Did you ever ask anybody at any  
19 point in time when you were consulting to CTR  
20 what the purpose of the Committee of Counsel  
21 was?

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1 A. I don't remember having done that.

2 Q. Did you have an understanding as to  
3 what the Committee of Counsel did with respect to  
4 research projects of CTR?

5 A. I know that the Committee of Counsel  
6 had something to do with certain research  
7 projects, not CTR projects that I was aware of.

8 Q. What projects were you aware of them  
9 being involved with?

10 A. Well, you know, various companies were  
11 also funding research on their own.

12 Q. Uh-huh.

13 A. And they may have been involved in that  
14 or a cooperative effort. I don't know. I never  
15 did inquire.

16 Whether they had anything to do with  
17 any of the CTR contracts, contracts, the few that  
18 were around, I don't know.

19 But I know that they did get involved  
20 in some contracts with some scientists, some  
21 research with some scientists.

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1 Q. At CTR?

2 A. No. I mean research scientists out  
3 there.

4 Q. And was that to cover research for  
5 litigation purposes?

6 MR. KLUGMAN: Objection to form.

7 A. I have no idea.

8 (Whereupon, Zahn Deposition  
9 Exhibit No. 3, memo from Holtzman to Milhiser  
10 dated March 19, 1974, marked.)

11 Q. Let me show you what I will mark as  
12 Exhibit 3, March 19, 1974, Mr. Holtzman to  
13 Mr. Milhiser, subject committee to review  
14 industry research.

15 MR. KLUGMAN: I don't think it is  
16 privileged, but I don't know.

17 Q. While you are deciding, let me just ask  
18 you questions that that I can ask independent of  
19 the document.

20 MR. KLUGMAN: Don't look at it yet.

21 A. Okay.

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1 Q. Alexander Holtzman was a lawyer?

2 A. Yes.

3 Q. For what company?

4 A. Philip Morris.

5 Q. And Ross Milhiser was a lawyer?

6 A. I don't know. I don't know.

7 MR. KRISTAL: Anybody asserting an  
8 objection?

9 Okay if I ask a question?

10 MR. KLUGMAN: No. I mean you can ask,  
11 but I can't let him answer, unless you want to,  
12 as I discussed the possibility before, lodge the  
13 privileged objection, and then upon obtaining  
14 information, withdraw it.

15 MR. KRISTAL: I have no problem doing  
16 that, if the information and the withdrawal comes  
17 today, during the course of the deposition.

18 MR. KLUGMAN: Yeah. Yeah.

19 MR. KRISTAL: I don't want to wait three  
20 weeks.

21 MR. KLUGMAN: I don't either, because

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1 we'll never remember to come back to it.

2 Mr. Kristal has marked Exhibit 3, a  
3 document that looks like it comes from the files  
4 of Philip Morris. This is a communication from a  
5 lawyer at Philip Morris.

6 We are trying to determine whether  
7 Philip Morris asserts a privilege as to this  
8 document.

9 What we have agreed to do is that we'll  
10 object, or more properly, Mr. Padmanabhan will  
11 make the objection.

12 We will go ahead under the procedure  
13 that Judge Gwin has provided for, and again it is  
14 between you guys, and we will as soon as we can  
15 determine whether to withdraw those objections,  
16 based upon the position the Philip Morris lawyers  
17 may take with respect to this document.

18 MR. KRISTAL: I'm going to ask somebody  
19 to specifically identify who is asserting the  
20 privilege and what exactly the privilege is, so  
21 we have a clear record here, rather than we're

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1     asserting some nebulous privilege on behalf of  
2     some unidentified party.

3             Q.     The memo reads.   "This is to follow up  
4     the discussion we had returning from Washington?

5             MR. PADMANABHAN: Before you get to the  
6     document, let me just be clear. I will assert an  
7     objection on behalf of Philip Morris,  
8     attorney-client and attorney work product.

9             MR. KRISTAL: I thought you said you  
10    were here representing Brown & Williamson.

11            MR. PADMANABHAN: I'm here representing  
12    Brown & Williamson.

13            MR. KRISTAL: Wait a minute, who are you  
14    representing at this deposition?

15            MR. PADMANABHAN: I represent Brown &  
16    Williamson.

17            MR. KRISTAL: On what basis do you  
18    assert you can assert a privilege for Philip  
19    Morris?

20            MR. PADMANABHAN: We are asserting a  
21    privilege on behalf of Philip Morris based on the

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1       assumption that they have lodged a privilege on  
2       this document.

3               MR. KRISTAL: My question is what  
4       standing does Brown & Williamson have to lodge an  
5       objection on behalf of Philip Morris?

6               MR. KLUGMAN: Can I answer that?

7               MR. KRISTAL: Sure.

8               MR. KLUGMAN: The objection has been  
9       made.

10              MR. KRISTAL: Who has made the  
11       objection.

12              MR. KLUGMAN: The objection has been  
13       made in various cases to the production of this  
14       document.

15              MR. KRISTAL: You guys do what you feel  
16       is necessary.

17              MR. KLUGMAN: I don't know the record  
18       in this case.

19              MR. KRISTAL: You guys do whatever you  
20       feel you should do. All I want is an assertion  
21       of some particular privilege on behalf of some

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1 particular party, and we'll hash it all out  
2 later.

3 MR. PADMANABHAN: Yeah, that's what we  
4 were trying to do.

5 MR. KRISTAL: What is your objection?

6 MR. PADMANABHAN: I believe that Philip  
7 Morris may have an attorney-client privilege  
8 objection and attorney work product objection to  
9 the use of this document.

10 Pursuant to Judge Gwin's order, we  
11 cannot instruct the witness know to answer. You  
12 can ask questions about the document, with the  
13 understanding that there is no waiver and that  
14 this will be under seal.

15 MR. KRISTAL: Just so we don't burden  
16 the record further, if you simply make your  
17 objection, work product, attorney-client, state  
18 who is it is on behalf of, we don't need to keep  
19 repeating the protocol, because I agree and we've  
20 agreed that is the protocol. You follow what I'm  
21 saying? Because each --

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1 MR. PADMANABHAN: If that is on the  
2 record, I won't burden it any more than that.

3 MR. KRISTAL: I appreciate that. Thank  
4 you.

5 MR. KLUGMAN: Let's go ahead.

6 Q. Mr. Holtzman writes to Mr. Milhiser in  
7 March of 1974, that: "This is to follow up the  
8 discussion we had returning from Washington last  
9 Thursday."

10 Do you see that?

11 A. Yes.

12 Q. "It seems that there will be soon be  
13 another Executive Committee meeting to try to  
14 organize the Research Committee."

15 Do you see that?

16 A. Yes.

17 Q. Now, CTR had an Executive Committee,  
18 did it not?

19 MR. KLUGMAN: Objection to the form.

20 A. Well, the board, I believe, not the  
21 SAB, but the board of directors.

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1 Q. Yes.

2 A. I believe so, yes.

3 Q. Mr. Holtzman suggested in the third  
4 paragraph: "I suggested it might be possible for  
5 you to accept the job, which is chair of this  
6 research committee"; do you see that?

7 "Without tying up too much time in the  
8 work of the committee. You could organize two  
9 working groups which would be assigned to  
10 consider the CTR and non-CTR programs and make  
11 suggestions for future course of these programs.  
12 The members of each group who are connected with  
13 CTR and TI, should serve in an advisory capacity  
14 and should not participate in the ultimate  
15 decisions of the committee or in preparing the  
16 reports of the working groups."

17 Do you see that?

18 A. Yes.

19 Q. This is the genesis of what became the  
20 Research Liaison Committee that you were on, does  
21 it not?

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- 1 MR. KLUGMAN: Objection to the form.
- 2 A. I don't know for sure.
- 3 Q. Mr. Holtzman writes: "My tentative
- 4 idea as to the composition of these two groups is
- 5 the following: To consider CTR research program,
- 6 Curt Judge, Cy Hetsko, Wally Hughes, Bill Shinn,
- 7 Dr. Gardner, Leonard Zahn." Correct?
- 8 A. Yes.
- 9 Q. Now, Cy Hetsko was a lawyer?
- 10 A. I believe so.
- 11 Q. Curt Judge was a lawyer?
- 12 A. I don't know.
- 13 Q. Bill Shinn was a lawyer?
- 14 A. Yes.
- 15 Q. So the suggestion from Mr. Holtzman is
- 16 that on this committee of six people, at least we
- 17 know now there are two lawyers, correct? Right?
- 18 A. Yes.
- 19 Q. And yourself?
- 20 A. Yes.
- 21 Q. And Dr. Gardner who was with CTR?

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1 A. Yes.

2 Q. And then Mr. Hughes who is a research  
3 director, correct, of one of the tobacco  
4 companies?

5 A. I assume that he was that at the time.

6 Q. And Curt Judge was with Lorillard at  
7 the time?

8 A. I believe he was president. I'm not  
9 sure, or head of it, chairman or whatever.

10 Q. And then Mr. Holtzman is recommending  
11 another group of people to consider non-CTR  
12 research programs, correct?

13 A. Yes.

14 Q. Let me show you Exhibit 4, which is a  
15 month after Exhibit 3 is written. And this is  
16 from William Smith to Mr. Ramm at the Council for  
17 Tobacco Research.

18 (Whereupon, Zahn Deposition  
19 Exhibit No. 4, letter from Smith to Ramm dated  
20 April 29, 1974, marked.)

21 MR. KRISTAL: The date is April 29,

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1 1974.

2 THE WITNESS: Do I look at it?

3 MR. KLUGMAN: Hold on.

4 Q. William Smith was with RJR?

5 A. Yes.

6 Q. And he writes to Mr. Ramm,

7 MR. KLUGMAN: Excuse me. We need to  
8 determine whether it is a privileged document,  
9 and it may be difficult, because you have given  
10 us a document, like I say, that doesn't have a  
11 Bates stamp.

12 I guess it does. It is hard to read,  
13 but we can try to cut that down. I assume you  
14 don't know where this one comes from. If you do,  
15 let us know, it might help.

16 MR. KRISTAL: I cannot articulate the  
17 particular source of any of these documents.

18 MR. KLUGMAN: Okay.

19 MR. PADMANABHAN: Out of an abundance of  
20 caution then, until we determine for sure, we'll  
21 assert a privilege objection on behalf of R.J.

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1 Reynolds.

2 Q. Dear Henry: "Agreement has now been  
3 reached with each of the major manufacturers."

4 MR. KRISTAL: Can we go off the record a  
5 second?

6 VIDEO OPERATOR: Going off the record.

7 The time is 11:09.

8 (Discussion off the record.)

9 VIDEO OPERATOR: Go back on the  
10 record. The time is 11:10.

11 Q. The document reads:

12 "Dear Henry: Agreement has now been  
13 reached with each of the major manufacturers as  
14 to their representative who will serve on the  
15 committee to study the research programs funded  
16 by our industry, both through CTR and independent  
17 projects that are brought to us from time to  
18 time."

19 Do you see that?

20 A. Yes.

21 Q. And then listed are six individuals

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1 from the various tobacco companies, correct?

2 A. Yes.

3 Q. Now, Mr. Goldsmith, who is listed  
4 representing Philip Morris, was a lawyer?

5 A. I don't know.

6 Q. Mr. Roemer, for R.J. Reynolds?

7 A. I believe he was a lawyer.

8 Q. And we have already gone through  
9 Mr. Hetsko, who was a lawyer, correct?

10 A. Yes.

11 Q. Then it is written after those names:

12 "I have asked Dave Hardy to chair this  
13 committee, and he has agreed to do so."

14 Do you see that?

15 A. Yes.

16 Q. Mr. Hardy was a lawyer with the Kansas  
17 City law firm of Shook, Hardy & Bacon?

18 A. Yes.

19 Q. Then you are listed as representing on  
20 this committee the Council for Tobacco Research,  
21 correct?

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1 A. With Dr. Gardner and, I mean, I don't  
2 know who wrote this yet.

3 Q. William Smith.

4 A. Oh, Smith. When he says I represent,  
5 and then the previous letter suggesting the  
6 formation of this, I am supposed to be advisory  
7 only, and maybe that is what I really was.

8 The fact that Smith writes I'm a  
9 representative of CTR does not necessarily make  
10 that so.

11 Q. Well, you were, you did attend these  
12 committee meetings that were reviewing research,  
13 right?

14 A. Yes.

15 Q. And the committee would make  
16 recommendations to CTR regarding what funding  
17 should or shouldn't be done?

18 MR. KLUGMAN: Objection to the form.

19 A. You know, I can't recall just what  
20 protocol of the system was that they finally  
21 ended up with, but obviously, there were some

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1 recommendations. Exactly how or the mechanism, I  
2 don't know.

3 Q. But in terms of whether you were  
4 representing CTR or not on this committee, you  
5 were not there as Leonard Zahn, private citizen,  
6 correct?

7 A. No. But I was there as Leonard Zahn of  
8 Leonard Zahn & Associates, a consultant to the  
9 CTR.

10 (Whereupon, Zahn Exhibit No. 5,  
11 letter from Hardy dated May 31, 1974, was marked  
12 for identification.)

13 Q. The next document is dated May 31st,  
14 1974, another month after the last exhibit, and I  
15 will mark that as Exhibit 5, and that is from  
16 Mr. Hardy at Shook, Hardy & Bacon to Mr. Bates,  
17 Goldsmith, Hetsko, Hughes, Judge and Roemer, with  
18 a copy to yourself and others. Do you see that?

19 MR. KLUGMAN: Well, surprise, I got the  
20 same issue.

21 MR. PADMANABHAN: Mr. Kristal, we'll

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1     assert an attorney client privilege objection on  
2     behalf of Brown & Williamson, Philip Morris,  
3     Lorillard and R.J. Reynolds.

4             Q.     Mr. Hardy writes: "Gentlemen, it was  
5     agreed at our meeting on May 21st, that the  
6     committee would meet again at 2:00 p.m. on June  
7     24th and 2:00 p.m. on August 8. Both meetings  
8     will be held in the conference room at CTR."

9             Do you see that?

10            A.     Yes.

11            Q.     Were the meetings of the Research  
12     Liaison Committee held at the CTR office?

13            MR. KLUGMAN:   Objection to the form.

14            A.     Mr. Kristal, I cannot swear to that. I  
15     would just have to believe they were. I don't  
16     remember where they were held exactly.

17            Q.     Okay. Now, apparently, there were some  
18     assignments made in which individuals were,  
19     according to Mr. Hardy's letter, to prepare  
20     summaries on a particular topic. Do you see that  
21     in the second paragraph?

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1 A. Yes.

2 Q. You are listed as having the assignment  
3 of the American Heart Association, and the  
4 American Lung Association research, correct?

5 A. Yes.

6 Q. Did you prepare a summary of what those  
7 two groups; the research they had done on  
8 smoking?

9 A. I do not remember having done so, but I  
10 undoubtedly did.

11 Q. Okay. Now, the last item under the  
12 various assignments, it reads:

13 "Shook, Hardy & Bacon: Harvard, UCLA  
14 and Washington U. projects, Washington University  
15 projects, and Special Projects."

16 Do you see this?

17 A. Yes.

18 Q. So Mr. Hardy, his law firm at least,  
19 was assigned the task at that meeting, of giving  
20 a summary of the Harvard, UCLA and Washington  
21 University projects, correct?

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1 MR. KLUGMAN: Objection to the form.  
 2 A. That's what this says.  
 3 Q. And what were called Special Projects,  
 4 do you see that?  
 5 A. Yes.  
 6 Q. Okay.  
 7 MR. KLUGMAN: Jerry, let me suggest,  
 8 you put this sticker on the copy that's got your  
 9 highlighting on it.  
 10 MR. KRISTAL: So I waived my work  
 11 product privilege.  
 12 MR. KLUGMAN: You want to use that?  
 13 All right. Sometimes when you copy it, it comes  
 14 out black.  
 15 Q. Let me you show you Exhibit 6, two  
 16 months after that, another letter from Mr. Hardy  
 17 to this committee, including yourself,  
 18 Mr. Gardner, Mr. Goldsmith, Mr. Hetsko, a number  
 19 of other people, and it is dated July 8, 1975.  
 20 THE WITNESS: Shall I read that?  
 21 MR. PADMANABHAN: I'm going to assert an

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1 objection on behalf of Brown & Williamson as well  
2 as Philip Morris, Lorillard, R.J. Reynolds, based  
3 on the attorney-client privilege.

4 Q. Now, Mr. Hardy --

5 MR. KLUGMAN: You want him to read it?

6 MR. KRISTAL: Yeah. Let me ask the  
7 questions, and if you need to read it while I'm  
8 doing that, you can let me know.

9 Q. Mr. Hardy writes to the committee,  
10 which does include yourself, does it not?

11 A. Yes.

12 Q. Gentlemen: "Cy Hetsko requested that  
13 he be supplied with a brief statement of the  
14 point of the proposed animal study at Boulder,  
15 Colorado, in order that it may be considered  
16 without the other two aspects of the originally  
17 proposed genetics project."

18 Do you see that?

19 A. Yes.

20 Q. Was it a purpose of this committee to  
21 review research proposals that were submitted to

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1 the Scientific Advisory Board of CTR?

2 MR. KLUGMAN: Objection to the form,  
3 Mr. Kristal, and there is a premise in that  
4 question that is totally false. I assume it is  
5 made in good faith.

6 MR. KRISTAL: Please don't coach the  
7 witness. If you have an objection, state the  
8 legal basis, just say form, foundation, whatever  
9 is the legal basis.

10 MR. KLUGMAN: Fine. If you want to  
11 know what is wrong with the question, I won't  
12 tell you. I think we'll do better if I try to  
13 help you.

14 MR. KRISTAL: Well, if I need your help  
15 I would be happy to ask it, I'm not bashful..

16 MR. KLUGMAN: In this case you do,  
17 Mr. Kristal, you are either being dishonest,  
18 which I doubt, or else you just don't have the  
19 information.

20 MR. KRISTAL: Okay.

21 A. It was not, as I recall, or my

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1 understanding that this committee reviewed  
2 proposals to CTR.

3 Q. Was it reviewing its own research  
4 considerations and then submitting it to CTR?

5 MR. KLUGMAN: Objection to form.

6 A. I don't know where the proposals came  
7 from, if not from the members of the committee.

8 They may have come from outside sources  
9 like a Harvard or whatever. How these things  
10 work, there is no definite formula or process  
11 where something like this picks up a life of its  
12 own and starts moving along and ends up getting  
13 some money somewhere, not only in this case, but  
14 with other organizations.

15 Q. I'm talking about this committee, the  
16 Research Liaison Committee.

17 A. Where some of these proposals came  
18 from, I have no idea. How they got before us, I  
19 don't know. I can only speak for the ones that I  
20 heard some of these people talk about, and I  
21 don't even remember those. I'm certain only

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1 about the ones that I devised.

2 Q. Now, the committee would meet and  
3 consider various research projects; is that fair  
4 to say?

5 MR. KLUGMAN: Objection to the form.  
6 What was the committee doing at its meetings?

7 A. I am trying to remember. I'm going  
8 back almost 24 years, 23 years, I don't remember  
9 that much. I remember I was on the committee,  
10 and the committee was involved in a research  
11 area, and I believe that we did discuss research  
12 proposals, and we may have discussed ongoing  
13 research. I don't know, and tried to assess  
14 them. I cannot recall.

15 Q. Were suggestions ever made to CTR or  
16 any group within CTR, such as the Scientific  
17 Advisory Board, as to research that the committee  
18 wanted done?

19 MR. KLUGMAN: Objection to the form.

20 A. I'm not aware of that specific area.  
21 But, yes, a number of times, SAB members would

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1 bring up ideas for research. And often this  
2 would come in connection with a discussion of a  
3 particular grant.

4 Q. I'm talking about in this committee,  
5 would SAB members do that, in this committee?

6 A. I didn't even know that SAB members  
7 knew about this committee, or what would come  
8 from it.

9 Q. So when you said SAB members brought up  
10 proposals they wanted, I'm not talking about SAB,  
11 I'm talking about this committee, okay? Are you  
12 with me so far?

13 A. I don't know if the SAB even knew about  
14 this committee.

15 Q. Okay. This committee, as far as you  
16 know, what happened with its work product, what  
17 was done with research that was considered by  
18 this committee?

19 MR. KLUGMAN: Objection to the form.

20 A. Some of it may have come to life  
21 somewhere along the line, and the rest of it may

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1 have died on the vine.

2 Q. When you say come to life, when you say  
3 came to life --

4 A. Got funding.

5 MR. KLUGMAN: Objection.

6 Q. By CTR?

7 A. That I don't know.

8 Q. If you go back a couple of documents,  
9 the committee that you were on was for CTR-funded  
10 research, was it not?

11 MR. KLUGMAN: Objection to the form.

12 A. Which one?

13 Q. I'm asking you, Exhibit 3, March 19,  
14 1974.

15 MR. KLUGMAN: And what was the  
16 question?

17 Q. The committee that you were on was to  
18 consider CTR research.

19 MR. KLUGMAN: Wait a second,  
20 Mr. Kristal. There is no evidence that this  
21 committee ever existed.

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1 A. Well, it says research program.

2 Q. So the committee that you were on.

3 A. Yeah.

4 Q. Was to consider the CTR research  
5 program?

6 A. Right.

7 MR. KLUGMAN: Objection. No  
8 foundation. You misstated his testimony, and you  
9 misstated the record. This is a proposal.

10 (Whereupon, Zahn Exhibit No. 6,  
11 letter dated July 8, 1975 from Hardy, was marked  
12 for identification.)

13 Q. Now, Exhibit 6, the July 8th, 1975  
14 letter, of Mr. Hardy to you and the other members  
15 of the committee, copy it says here was sent to  
16 the Committee of Counsel, do you see that?

17 A. That's this last one, No. 6.

18 MR. KLUGMAN: What was the question?

19 MR. KRISTAL: I'm asking if a copy,  
20 according to the document, was sent to the  
21 Committee of Counsel.

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1           A.    Yes.  I see that, but that's all I can  
2   say.

3                   (Whereupon, Zahn Exhibit No. 7,  
4   letter dated March 1, 1976 from Zahn to Hardy,  
5   was marked for identification.)

6           Q.    Okay.  Now, let me mark as Exhibit 7  
7   letter from yourself to Mr. Hardy of Shook, Hardy  
8   & Bacon, dated March 1st, 1976.

9                   Did you write this document?

10          A.    I obviously did.  I don't recall it,  
11   but there is no doubt that I did.

12          Q.    And you wrote:  "Dear Dave:  I know a  
13   number of us are concerned about the tobacco  
14   radioactivity theory Martell and Radford have  
15   been publicizing so well recently.  You may  
16   recall it was Radford (with Wilma Hunt) who first  
17   proposed the theory a dozen years ago.  I feel  
18   the matter should be brought before the Research  
19   Liaison Committee at the March 25th meeting to  
20   see whether the industry should look into this  
21   area on a scientific basis."

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1 Do you see that?

2 A. Yes.

3 Q. Is this an example of you suggesting  
4 research that may be done by the industry?

5 MR. KLUGMAN: Objection to the form.

6 A. Well, I am certainly suggesting, as I  
7 recall the Martell Radford work, that actually  
8 ended up going nowhere.

9 I recall -- this is the very reason I  
10 wanted some mechanism of proposing research into  
11 a specific area to be supported. How it would be  
12 or what the mechanics would be or mechanism, I  
13 don't know.

14 Q. Then you continue in your letter: "I  
15 hope we can discuss and perhaps decide whether a  
16 project of some kind should be initiated. Of  
17 course, there will have to be an evaluation of  
18 the current situation."

19 Do you see that?

20 A. Yes.

21 Q. Who was funding the projects that were

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1 recommended by the Research Liaison Committee?

2 MR. KLUGMAN: Objection to the form.

3 No foundation.

4 Q. Let me move back. Did the Research  
5 Liaison Committee ever recommend that any project  
6 ever been funded?

7 A. I cannot recall.

8 Q. Okay.

9 A. It may be that when the committee died  
10 or before it disappeared, that recommendations  
11 were made, whether by the committee or its  
12 chairman or whatever. I don't know.

13 Q. Who are the universe of groups or  
14 people that were considered for funding  
15 research?

16 A. I'm sorry, I didn't hear what you said  
17 in the beginning.

18 Q. Research Committee, you testified  
19 earlier one of the things they did was to come up  
20 with ideas for research for CTR to fund; is that  
21 correct?

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1 MR. KLUGMAN: Objection to the form. I  
2 don't recall that testimony.

3 Q. Well, is that a correct statement?

4 MR. KLUGMAN: Objection to the form. I  
5 don't think that's a fair question.

6 A. I don't know whether I said CTR should  
7 fund it or what. Doesn't matter. I'm looking  
8 for some way of getting what I thought would be a  
9 good research project under way.

10 Q. And who were the universes that you  
11 were considering?

12 A. Universe, I don't know, you mean the  
13 mechanism, the organization?

14 Q. Who was going to fund it? Who was  
15 going to fund the research you were talking  
16 about?

17 A. It would have to be somebody in the  
18 industry to do it.

19 Q. And were you recommending that these  
20 projects be funded by an individual company or a  
21 group such as CTR or some other entity?

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1           A.    Whatever the committee could come up  
2           with. I didn't have the authority to say that,  
3           well, this should do it or that should do it.

4                    I certainly had no way of raising the  
5           funds, but I hoped that somebody in the industry,  
6           some industry organization or entity would  
7           provide funding for projects that we thought  
8           would be worthwhile.

9                    (Whereupon, Zahn Exhibit No. 8,  
10          memo from Goldsmith to Wakeham, was marked for  
11          identification.)

12          Q.    Okay. Let me mark as Exhibit 8 a  
13          document by Mr. Wakeham to Mr. Goldsmith dated  
14          July 30, 1976, and it is entitled: "Comments on  
15          the meeting of the Research Liaison Committee at  
16          CTR on July 28th, 1976."

17                   The first item that is listed here is a  
18          list of attendees at the meeting.

19          A.    I'm just wondering --

20          Q.    You can always look at the document. He  
21          can look at the document. No matter what your

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1 position is, he is going to be looking at the  
2 document, right?

3 MR. KLUGMAN: Yes. But I think  
4 Mr. Padmanabhan needs to decide whether to make  
5 the objection first. You are right. He is going  
6 to wind up looking at the document.

7 MR. KRISTAL: Go ahead.

8 MR. KLUGMAN: You want something to  
9 laugh at, Mr. Kristal, I suggest you take a look  
10 at some of the waiver arguments that have been  
11 made in the last six months.

12 VIDEO OPERATOR: While you are looking  
13 at the document, can I change the tape?

14 MR. KRISTAL: Sure.

15 VIDEO OPERATOR: Go off the record.  
16 The time is 11:28.

17 (Discussion off the record.)

18 VIDEO OPERATOR: Back on the record,  
19 the time is 11:30. This is the beginning of the  
20 second videotape.

21 MR. PADMANABHAN: Mr. Kristal, I'm going

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1 to object on the basis of the attorney-client  
2 privilege and attorney work product on behalf of  
3 defendants Brown & Williamson, Philip Morris,  
4 Reynolds, and Lorillard.

5 Q. This is references Research Liaison  
6 Committee at CTR on July 28, 1976, does it not?

7 A. Yes.

8 Q. And you were listed as being present at  
9 that time?

10 A. Yes. I am.

11 Q. There were two, four, six, eight, I  
12 think there are 15 people present, if my math is  
13 correct, 16 people?

14 A. 16.

15 Q. Okay. And how many of those 16 were  
16 lawyers?

17 A. Are you asking me to?

18 Q. Mr. Hardy was a lawyer, right, that's  
19 one?

20 A. Hardy, Hoel, Roemer, I guess Horace  
21 Kornegay was, Cy Hetsko, Holtzman, Ad Yeaman. I

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1 don't remember Kersey or Gastman at all.

2 I guess the membership of the committee  
3 kept flowing and changing and shifting depending  
4 on vacations and work schedules or whatever,  
5 people sending deputies or replacements. I don't  
6 even remember the last two.

7 Q. Now, the second item reads:  
8 "Dr. Gardner presented his recommendations for  
9 handling the so-called behavioral research  
10 projects."

11 Do you see that?

12 A. Yes. Number two, yes.

13 Q. And Dr. Gardner at that time was  
14 Scientific Director of the Scientific Advisory  
15 Board?

16 A. I don't recall, but I am sure you are  
17 right.

18 Q. Well, he held a position in the CTR at  
19 that point in time?

20 A. Yes. Yeah.

21 Q. With the Scientific Advisory Board?

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1 A. Yes.

2 Q. The document continues: "His plan is  
3 to set up a symposium Organizing Committee for a  
4 meeting to discuss the psychopharmacology of  
5 smoking.

6 In this direction, they will do little  
7 on the pleasures and benefits of smoking. Hetsko  
8 vigorously opposed the program for fear that it  
9 might interact with the present FTC investigation  
10 of how cigarette companies are motivating the  
11 public to buy more cigarettes."

12 Do you see that?

13 A. Yes.

14 Q. Do you recall discussion at the  
15 Research Liaison Committee where various  
16 attorneys were lodging objections to proposals  
17 that were being made by members of the Scientific  
18 Advisory Board?

19 MR. KLUGMAN: Objection to the form.

20 A. No. I do not.

21 Q. The minutes do reflect that that

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1 happened here?

2 MR. KLUGMAN: Objection to the form.

3 A. Yes. They do.

4 Q. Now, Mr. Wakeham, who wrote this  
5 document, references in his last paragraph an  
6 outline that is attached.

7 Do you see that? The next to the last  
8 sentence?

9 A. Let me just read that whole item number  
10 three.

11 Q. Item number three is regarding the NIH  
12 proposal and Mr. Hardy and Dr. Huber, right? Let  
13 me read it.

14 Mr. Wakeham writes: "Other relatively  
15 unimportant topics will be found in the outline  
16 attached."

17 Do you see that?

18 A. Where does it say "outline attached"?

19 Q. The next to the last sentence of the  
20 document.

21 A. The next to the last sentence says

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1 other relatively unimportant topics, oh, yeah.

2 Q. Right?

3 A. Yes.

4 Q. Attached is an agenda for the meeting  
5 being referenced, July 28, 1976, correct?

6 A. Yeah.

7 Q. And then there is the next document is  
8 an outline that says Research Liaison Committee  
9 at CTR, again, July 28, 1976, correct?

10 A. Yes.

11 Q. And there were various, it is an  
12 outline of various topics that we discussed, and  
13 then there were various statements attributed to  
14 different people.

15 A. Yes.

16 Q. If you will look on the second page,  
17 for example, under 1(c), one of the subjects was  
18 polonium 210 radioactivity, should anything be  
19 done.

20 And there is your name. Zahn: "Maybe  
21 we should consider a project on this topic.

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1 Martell and Bradford have received a lot of PR on  
2 this and generated anti-tobacco propaganda."

3 Do you see that?

4 A. Yes.

5 Q. Who is the we that should consider a  
6 project that you are referring to?

7 A. I can't remember specifically going  
8 back all the years, but, obviously, somebody in  
9 the industry, the industry should do something  
10 about it.

11 Q. Okay. Now, if you turn to page three  
12 under the behavioral research projects, Mr.  
13 Hardy, apparently, gave a historical review.

14 Do you see that?

15 A. Yes. I am sorry.

16 Q. It is written: "Decided not to have  
17 symposium proposed by Industrial Technical  
18 Committee."

19 A. Industry Technical Committee, yes.

20 Q. And the Industry Technical Committee  
21 was a committee of CTR, correct?

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1 MR. KLUGMAN: Objection to the form.

2 A. I don't think so.

3 Q. Well, the Industry Technical Committee  
4 was a committee of what?

5 A. It was a committee of the Scientific  
6 Directors, head of laboratories, whatever, of the  
7 various tobacco companies.

8 Q. And their purpose was to advise the  
9 Scientific Advisory Board on technological  
10 matters, was it not?

11 MR. KLUGMAN: Objection to the form.

12 A. Yes. But I don't think it was a  
13 committee of CTR like a Scientific Advisory  
14 Board.

15 It may have been, but I really never  
16 looked at it that way. I just looked at it as a  
17 committee that the various companies put  
18 together.

19 Q. Okay. Mr. Hardy suggests under the  
20 behavioral research projects down about  
21 two-thirds of the way down:

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1 "We want to be sure to include  
2 benefits of smoking. Is that included?"

3 Do you see that?

4 A. Yes.

5 Q. Mr. Hetsko writes, or it is attributed  
6 to Mr. Hetsko after that: "Concerned that such a  
7 study might play into hands of FTC subpoena  
8 fishing for information, smoker motivation. We  
9 would like to see conference proposal checked out  
10 before we go ahead. This program goes beyond the  
11 Organizing Committee and should be considered by  
12 committee of counsels."

13 Do you see that?

14 A. Yes.

15 Q. Am I correct in understanding this,  
16 that Mr. Hetsko was expressing a concern about a  
17 CTR proposed behavioral research project?

18 MR. KLUGMAN: Objection to the form.  
19 There is no reference to such a project in this  
20 document.

21 MR. KRISTAL: Other than it is under the

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1 heading behavioral research project.

2 MR. KLUGMAN: It is talking about a  
3 conference, if you read the document, sir,  
4 appears to me to be anyway.

5 Q. You see that?

6 A. I see that it is attributed to Hetsko,  
7 a summation of his comments on this point. You  
8 can attribute whatever you want to it.

9 Q. Well, what's your understanding of what  
10 he is saying there?

11 A. I'm really not sure. I would guess in  
12 view of what he was also quoted or cited as  
13 saying before, he doesn't want anything to come  
14 up that would make the FTC feel that the industry  
15 is trying to promote the benefits of smoking.

16 Q. Now, where it reads here: "This  
17 program goes beyond the Organizing Committee and  
18 should be considered by Committee of Counsels."

19 Did you ask him or anybody else at the  
20 meeting what is this Committee of Counsel, what  
21 do they do?

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1 A. I don't recall anything like that.

2 Q. Then Mr. Hardy is attributed to having  
3 said:

4 "Smoking behavior should be part of  
5 CTR program, as long as it is not pro company but  
6 is kept pro industry."

7 Do you see that?

8 A. Yes. I do.

9 Q. Was there a CTR program involving  
10 smoking behavior?

11 MR. KLUGMAN: Objection to form.

12 A. No. There was no program as such that  
13 I am aware of. Could he have been referring to  
14 any research project? You know how people tend  
15 to talk at meetings. That's about all I can  
16 think of.

17 Q. Do you recall any CTR program or  
18 project that was supposedly to be kept pro  
19 industry?

20 MR. KLUGMAN: Objection to the form.

21 A. No. I do not.

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1 Q. Mr. Hetsko is attributed, this is  
2 attributed to him:

3 "No problem if it is generated by  
4 SAB. This is a totally different area from what  
5 SAB has been dealing with. Doesn't want another  
6 book to haunt us as the one from the Caribbean  
7 caper did."

8 Do you know what the Caribbean caper  
9 is?

10 A. No. It sounds like a James Bond movie.

11 Q. Do you remember the conference in St.  
12 Marten?

13 A. Now that you mention it, I know there  
14 was one there.

15 Q. Did you attend the conference in St.  
16 Marten?

17 A. No. I didn't know about it, as I'm  
18 remembering now long afterward, and maybe it was  
19 on the motivation, smoker motivation, but I'm  
20 really not sure.

21 Q. And the conference was one sponsored by

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1 the tobacco industry; was it not?

2 A. I don't know.

3 Q. In St. Marten?

4 A. I don't know. I really don't know. I  
5 heard about it long afterward, and never saw  
6 anything about it.

7 Q. Now, if you will look on the next page,  
8 Mr. Yeaman, there is a statement attributed to  
9 him. Now, Addison Yeaman at that time was the  
10 head of the CTR, correct?

11 A. I have to take your word for it.

12 Q. He replaced Mr. Ramm, did he not?

13 A. Yes. He succeeded him.

14 Q. And Mr. Yeaman, what is attributed to  
15 him is the following:

16 "We take our direction from our  
17 members, the industry members. CTR so far is  
18 clean of FTC investigation, except possibly for  
19 the St. Marten conference."

20 Do you see that?

21 A. Yeah, but that's not a quote from him

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1 directly. It is just a quote from this summation  
2 of what Wakeham thought he heard Yeaman say.

3 Q. Okay.

4 A. Okay.

5 Q. Do you have an independent recollection  
6 of this meeting and what Yeaman may have said?

7 A. Not at all.

8 Q. Do you have any reason to believe that  
9 Mr. Wakeham incorrectly attributed that statement  
10 to Mr. Yeaman?

11 A. I have no idea.

12 Q. Do you agree or disagree that CTR takes  
13 its direction from the industry members?

14 MR. KLUGMAN: Objection to the form.

15 A. I don't know what Yeaman means by  
16 "direction."

17 Q. Okay. Do you agree or disagree that  
18 the CTR took direction from industry lawyers?

19 MR. PADMANABHAN: Are you talking about  
20 the research program or talking about the CTR  
21 generally, its administration?

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1 MR. KRISTAL: Let's start generally.

2 MR. KLUGMAN: Objection to the form.

3 A. Generally, no. Specifically in regard  
4 to the SAB's program, no, definitely no.

5 Q. Now, Mr. Hetsko, it is attributed to  
6 him:

7 "Decision for actions should be made  
8 by lawyers, not CTR or Organizing Committee."

9 Do you see that?

10 A. Yes.

11 Q. Was the decision for this behavioral  
12 research project made by the lawyers and not CTR  
13 or the Organizing Committee?

14 MR. KLUGMAN: Same objection. It is  
15 clear from the document they are not talking  
16 about a project.

17 A. Well, the meeting hasn't even been held  
18 yet.

19 Q. That's correct, and they were trying to  
20 decide, were they not, whether to have the  
21 meeting?

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1 A. I guess. Yes.

2 Q. And Mr. Hetsko, one of the lawyers,  
3 said that the decision for the CTR meeting should  
4 be made by the lawyers, whether or not to have  
5 it, right?

6 A. That's what he says, yes. And then he  
7 gives his reasons. I believe, I haven't finished  
8 reading this, as to why he made that suggestion.  
9 I think that's why he started saying this.

10 Q. Well, he goes on to say:  
11 "Chronologically this meeting might be occurring  
12 just at a time that some of these experts are  
13 also being questioned by, he wrote TTC, I assume  
14 that's FTC, about motivation. This convergence  
15 might result in intensification of the conflict.  
16 Suggest Dr. Gardner present his program for  
17 review by all the lawyers. No records of such a  
18 review are to be kept."

19 Do you see that?

20 A. Yes.

21 Q. So he was concerned that somehow the

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1 FTC would be questioning the people at this CTR  
2 behavioral project meeting, correct?

3 MR. KLUGMAN: Objection. No  
4 foundation

5 Q. Isn't that what he says here?

6 MR. KLUGMAN: He doesn't say anything  
7 here, sir.

8 A. I don't know what he says here, but I  
9 am just wondering if this was going to be a  
10 public meeting in the sense that it was going to  
11 be a scientific meeting.

12 And when you invite a bunch of  
13 scientists to a meeting, they can publish, they  
14 can report, they can call their local newspaper  
15 and whatever, their university or their  
16 affiliation can issue a press release to get some  
17 attention to him and to his work in the  
18 institution, it happens every day.

19 MR. KRISTAL: I move to strike the  
20 non-responsive portions of that answer.

21 THE WITNESS: You are asking me to

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1 attribute to Hetsko what I am not sure about. I  
2 am just giving you a possibility of how these  
3 things worked.

4 MR. KRISTAL: That's why I moved to  
5 strike the answer.

6 THE WITNESS: Your privilege.

7 Q. Now, where it says here: "No records  
8 of such review are to be kept."

9 Now, you were at this meeting, right?

10 A. Yes.

11 Q. Did you ask anybody why no records of a  
12 meeting that Dr. Gardner would have with the  
13 lawyers presenting his program for review should  
14 not be recorded anywhere?

15 MR. KLUGMAN: Objection. Misstates  
16 evidence.

17 A. I don't recall ever having done that.  
18 I don't recall Hetsko talking about this. I  
19 certainly don't remember his saying anything as  
20 specific as no records of such a review should be  
21 kept, ought to be kept.

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1 Q. Do you have any reason to believe that  
2 Mr. Wakeham did not get that correctly?

3 A. I have no idea.

4 Q. Now, on the last page, it is suggested  
5 that there be some sort of Meeting Information  
6 Coordinating Board for the lawyers and PR people  
7 to have some sort of exchange of information. Do  
8 you see that?

9 A. You mean under "other"?

10 Q. Yes.

11 A. Yes. A.

12 Q. Mr. Hardy, you thought it would be  
13 helpful to have some sort of exchange of reports  
14 between yourself, Mr. Hardy, the Tobacco  
15 Institute and Mr. Jacob regarding different  
16 meetings that you attended, correct?

17 A. Apparently, yes. I don't remember  
18 that. But I had been doing that anyway.

19 Q. And Mr. Jacobs was another lawyer  
20 representing CTR?

21 A. Jacob.

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1 Q. Jacob.

2 A. There is no S on it really.  
3 Apparently, yes.

4 Q. Were you ever a member of this Meeting  
5 Information Coordinating Board?

6 A. I don't even remember it.

7 Q. Now, then, there is also under the  
8 topic "other": "Shingleton proposal from Duke  
9 Medical School. Kornegay: Historical  
10 background. Hardy: Shingleton has made  
11 unfriendly statements about tobacco. Committee  
12 decided to turn down request, but could not agree  
13 on how to say no without embarrassing Kornegay."

14 Do you see that?

15 A. Yes.

16 Q. Who was Dr. Shingleton making his  
17 proposal from Duke Medical School to?

18 A. I have no idea. I can't recall this at  
19 all. I have never heard of a Shingleton. I  
20 don't know that he is a doctor. I will take your  
21 word he is with Duke Medical.

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1 Q. But that would, a proposal from  
2 Shingleton to Duke Medical School apparently was  
3 made at this meeting, correct, there was a  
4 discussion about his proposal?

5 A. I can't say, I just don't remember. I  
6 am assuming it was.

7 Q. And the committee, according to this,  
8 turned down the request, correct?

9 A. That's what this says.

10 Q. Okay. Was research proposals turned  
11 down because the person proposing the research  
12 had made unfriendly statements about tobacco?

13 MR. KLUGMAN: Objection to the form.

14 A. I have no idea.

15 Q. Let me give you Exhibit 10,165, which  
16 is dated April 21st, 1978. It is two handwritten  
17 pages, it is my understanding was written by  
18 Mr. Judge from Lorillard and up at the top it  
19 says scientific Research Liaison Committee.

20 The document reads: "(1) We have again  
21 abdicated the scientific research directional

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1 management of the industry to the lawyers with  
2 virtually no involvement on the part of  
3 scientific or business management side of the  
4 business."

5 Do you see that?

6 A. Yes.

7 Q. Do you agree or disagree with that?

8 MR. KLUGMAN: Objection to the form.

9 A. I don't agree, if you take the word  
10 "abdicated" in quotes literally.

11 Q. Okay. If you took it nonliterally,  
12 would you agree with it?

13 MR. KLUGMAN: Objection to the form.

14 A. No. I based my answer on the fact that  
15 I attended many meetings of the Scientific  
16 Advisory Board, and no lawyer was going to tell  
17 them what to do with the research program.  
18 Believe me, no way. And no lawyer ever did.

19 Q. Told them what research to do or not  
20 do?

21 A. Absolutely, or what to recommend be

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1 done or what so support or not support.

2 Q. Don't you remember the April 21, 1978  
3 meeting, of the Scientific Advisory Board which  
4 is the same date as this, at which you were  
5 present?

6 A. No. I don't.

7 Q. Do you remember Mr. Jacob telling the  
8 Scientific Advisory Board that they could not do  
9 research until the central nervous system  
10 research?

11 MR. KLUGMAN: Objection.

12 A. Oh, I remember that Jacob was, at that  
13 meeting, although I did not know until the date  
14 had been clarified by someone else asking me  
15 that.

16 Q. Right. That was last time.

17 A. And I do remember -- about all I do  
18 remember is that Jacob spoke about the problems  
19 involved in supporting research that had a  
20 commercial aspect to it.

21 Q. Okay. And told the SAB board, in no

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1 uncertain terms, that that research was not going  
2 to be funded, correct?

3 MR. KLUGMAN: Objection to the form.

4 A. I don't know why you say "no uncertain  
5 terms" or how you know that's the way he spoke,  
6 unless he told you that. I don't remember how he  
7 put it, but I know he advised them not to support  
8 research that had commercial implications.

9 Q. And that research was not supported,  
10 correct?

11 MR. KLUGMAN: Objection to the form.

12 A. I don't recall.

13 MR. KLUGMAN: Lack of foundation. Go  
14 ahead.

15 A. I don't recall. When you introduce  
16 this as being by whom, by Curt Judge, the same  
17 day as the SAB meeting, he was not at this  
18 meeting.

19 MR. KLUGMAN: I don't think Mr. Kristal  
20 is correct that it is the same day, but it is the  
21 same month.

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1 THE WITNESS: I don't remember him  
2 being at a meeting ever.

3 MR. KRISTAL: Move to strike the  
4 gratuitous comments.

5 Q. Item two on this document, 10,165,  
6 reads: "Lorillard's management is opposed to the  
7 total industry future being in the hands of the  
8 Committee of Counsel. It is reminiscent of the  
9 late 1960's when Ramm's group ran the TI, CTR and  
10 everything else involved with the industry's  
11 public posture." Do you see that?

12 A. Yes.

13 Q. Do you agree or disagree that in the  
14 late 1960's, Ramm's group right the TI, CTR and  
15 everything else involved with the industry's  
16 public policy?

17 MR. KLUGMAN: Objection to the form.

18 A. I have never heard of Ramm's group,  
19 Henry Ramm's group. I didn't know there was such  
20 a group. I have never heard of anything related  
21 to what is said here. I don't recall every

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1 hearing about it.

2 Q. Now, you knew Tom Hoyt from the very  
3 first days that you began to work at Hill &  
4 Knowlton, correct?

5 A. Yes.

6 Q. And at that time, he was the Chief  
7 Administrative Officer of TIRC, correct?

8 A. Yes.

9 Q. We are talking now about 1955?

10 A. Yes.

11 Q. He was formerly with Hill & Knowlton,  
12 correct?

13 A. Yes.

14 Q. And I take it Hoyt trusted you?

15 MR. KLUGMAN: Objection to the form.

16 Q. Was that your understanding?

17 A. I would hope so.

18 Q. And, in fact, I think you have

19 testified, let me strike that portion.

20 Is it correct that it was Mr. Hoyt in

21 1969 who asked you to come to work directly for

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1 CTR?

2 A. Yes. Mr. Hoyt and Mr. Ramm.

3 Q. Now, do you know what the Special  
4 Projects are? You have heard that term before?

5 A. I have heard it.

6 Q. You have no knowledge of what the  
7 Special Projects were about?

8 MR. KLUGMAN: Objection to the form.  
9 He has been asked about this, and he testified  
10 about it the last day, which I understand is a  
11 part of the deposition.

12 Q. Is that correct?

13 MR. KLUGMAN: Objection.

14 A. Generally, yes.

15 Q. And you at one point in time asked  
16 Mr. Hoyt what the Special Projects were?

17 A. Yes.

18 Q. And he told you it was none of your  
19 business, correct?

20 A. Yes.

21 Q. When was that, do you recall?

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1           A.    When I first heard of it, of them, I  
2    can't remember when that was.

3           Q.    What did you take that to mean -- well,  
4    strike that.

5                   Did Mr. Hoyt ever tell you in response  
6    to any of your other questions that it was none  
7    of your business, with respect to CTR and the  
8    work you were doing for CTR?

9           A.    I don't believe so. Whether he put it  
10   that way, I don't know, or if it was just words  
11   to that effect. I don't know. I don't recall.

12          Q.    Did you ever ask him at any other time  
13   after that first time what the Special Projects  
14   were?

15          A.    No.

16          Q.    Did you ever ask anybody else what the  
17   Special Projects were?

18          A.    I may have. I may have asked somebody  
19   on staff. I just can't remember.

20          Q.    Well, whoever you asked, if you did  
21   ask, nobody told you what they were, fair to

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1 say?

2 MR. KLUGMAN: Objection to the form.

3 A. No, but I -- sorry.

4 MR. KLUGMAN: Go ahead.

5 A. But I did get to know generally what  
6 they were, I think I did.

7 Q. What were they?

8 A. They were just what the name implied,  
9 projects that the Council somehow or maybe even  
10 the lawyers, somebody in the industry, was  
11 funding, and because they were in certain  
12 specific special areas, or specific areas.

13 Q. Okay. And was it your understanding  
14 that these projects were being funded through the  
15 CTR as a front?

16 MR. KLUGMAN: Objection to the form.

17 A. Well, the way you say front it implies  
18 something wrong or bad. I don't know how they  
19 were funded. I mean or who handled the  
20 administrative part of whatever was involved. I  
21 really don't know. I could -- well, I certainly

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1 shouldn't guess.

2 (Whereupon, Zahn Exhibit No. 9,  
3 minutes dated January 29, 1971, was marked for  
4 identification.)

5 Q. Let me show you what I will mark as  
6 Exhibit 9, which are minutes of the first annual  
7 meeting of members January 29, 1971, and it is  
8 the minutes of the CTR.

9 MR. KLUGMAN: Any particular part you  
10 want him to look at?

11 MR. KRISTAL: I thought you were  
12 reviewing it for an objection. I do have  
13 questions about it.

14 MR. KLUGMAN: No. No. No.

15 Q. First of all, if you will look at the  
16 second page, many people were present at this  
17 meeting, correct, you were present, you are  
18 listed in the middle of the list on the second  
19 page?

20 A. I guess I was. I don't remember. I am  
21 just looking at the spelling of the first name of

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1 the last individual cited on page one, LeBaun. it  
2 is DeBaun, D-e, capital D, small E. That's a  
3 feminine.

4 Q. You were present at this meeting?

5 A. That's what the list says.

6 Q. If you will look at page four, I  
7 realize this was a long time ago.

8 A. Yes.

9 Q. Apparently you were introduced by the  
10 chairman of CTR, and you gave a description of  
11 various work you had been doing, see at the  
12 bottom of page four?

13 A. Oh, yes.

14 Q. All right. Fair to say then, you were  
15 at the meeting?

16 A. Yes. Yes.

17 Q. Now, if you look at page three, it  
18 reads: "The chairman explained that the board of  
19 directors had approved as a special project the  
20 operation of an information and retrieval system  
21 relating to medical literature concerned with

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1 tobacco use and health. The expenses thereof to  
2 be borne by the participating companies as  
3 provided in an agreement with the corporation.

4 It was unanimously moved and approved  
5 that this special project would be named  
6 "information systems."

7 Do you see that?

8 A. Yes.

9 Q. Now, it was not the normal funding  
10 procedure for the individual companies to fund  
11 projects, as they come up. Correct?

12 A. I have no idea.

13 Q. Well, with all your work with the CTR,  
14 is it your understanding that there was a budget  
15 that was approved, that the Scientific Advisory  
16 Board was operating under?

17 A. Yes. But that budget was approved at  
18 an Executive Committee meeting of the board at  
19 the time of the annual meeting. There may have  
20 been similar meetings, when there was not a board  
21 meeting, and I never attended those.

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1 Q. But the regular projects were funded  
2 out of the CTR budget, correct?

3 A. Oh, yes, absolutely, yes.

4 Q. So it would not be normal or regular  
5 procedure to have the participating companies  
6 have a separate agreement with the corporation as  
7 to funding of Special Projects?

8 MR. KLUGMAN: Objection to the form.

9 A. I would suppose so.

10 Q. And then the document continues at this  
11 annual meeting: "The chairman further explained  
12 that the corporation will continue other Special  
13 Projects relating to research or investigation  
14 relative to tobacco use and health and may  
15 undertake new Special Projects for such purpose.  
16 The expenses pertaining to such projects to be  
17 borne by the participating companies."

18 Do you see that?

19 A. Yes.

20 Q. If you look at in the back, attached to  
21 this, were the financial reports of CTR, for the

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1 year ending December 31st, 1970.

2 Do you see that?

3 A. Yes.

4 Q. Now, on the second page of the  
5 financial statements, you have it right there,  
6 the one you just passed. Sir, let me help you  
7 get to that. The Bates number 272.

8 A. This one or the next one?

9 Q. The one before that.

10 A. Yes.

11 Q. The accountant is describing the  
12 various documents that are part of the financial  
13 report, correct?

14 A. Apparently.

15 Q. And Exhibit A is a balance sheet which  
16 shows assets and liabilities of the general fund  
17 and the Special Projects funds. Do you see  
18 that?

19 A. Yes.

20 Q. And if you look at the next page, down  
21 at the bottom, this is the balance sheet, dated

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1 December 31st, 1970, there was listed Special  
2 Projects fund.

3 Do you see that?

4 A. Yes.

5 Q. Were you aware at any point in time,  
6 that you were involved with CTR, that there was  
7 special funding for the Special Projects?

8 MR. KLUGMAN: Objection to the form.

9 A. I may well have been. Maybe that's  
10 when I asked Hoyt about it. I just don't  
11 remember. It certainly didn't mean, apparently  
12 didn't mean much to me. I did not pursue it with  
13 him.

14 Q. Okay.

15 A. If this was, indeed, the reason why I  
16 did ask you.

17 Q. Now, if you will look at the  
18 next-to-the-last page of the financial  
19 statements, where it says "notes to financial  
20 statements"?

21 A. Yes.

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1 Q. The fifth note is: "The Special  
2 Projects are financed by the cigarette  
3 manufacturing corporate members together with a  
4 cigarette manufacturing company that is not a  
5 member.

6 Such participants are entitled to any  
7 unexpended funds received for Special Projects  
8 and are liable for any accumulated deficit."

9 Did you ever inquire as to why the  
10 financing for the Special Projects was conducted  
11 in this manner?

12 MR. KLUGMAN: Objection to the form.

13 A. I don't even recall this. I certainly  
14 don't recall asking anybody about it.

15 Q. Can you think of any reason, as you sit  
16 here today, based on your knowledge of CTR, as to  
17 why cigarette manufacturer, corporate members and  
18 a cigarette manufacturing company that was not a  
19 member would have Special Projects funded by them  
20 going through CTR?

21 A. No. I saw no reason. Well, no, I

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1 never did.

2 MR. KRISTAL: Let me show you  
3 Exhibit 10, which is dated January 3rd, 1966. It  
4 is from Addison Yeaman to Messrs. Haas, Hetsko,  
5 Ramm, Russell and Smith.

6 (Whereupon, Zahn Deposition  
7 Exhibit No. 10, memo dated January 3, 1966 from  
8 Yeaman, marked.)

9 MR. PADMANABHAN: We'll assert an  
10 attorney-client privilege AND attorney work  
11 product claim on this document on behalf of Brown  
12 & Williamson, R.J. Reynolds, Philip Morris and  
13 Lorillard.

14 MR. KLUGMAN: Exhibit 10?

15 THE WITNESS: Yes.

16 Q. Now, Exhibit 10, Mr. Yeaman writes:  
17 If you find any needed corrections or changes  
18 in the enclosed, please note them at meeting of  
19 counsel on Thursday, January 6," correct?

20 And then he attaches a document  
21 entitled "meeting of general counsel on December

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1 17th, 1965. Pursuant to request from general  
2 counsel of each of the six participating  
3 companies, the Ad Hoc Committee submitted seven  
4 proposals for specific research projects which,  
5 in their view, deserved immediate  
6 implementation."

7 Do you see that?

8 A. Yes.

9 Q. Were you aware that general counsel was  
10 making requests of an Ad Hoc Committee for  
11 research proposals to be submitted?

12 A. You know, I --

13 MR. KLUGMAN: Objection to the form.

14 A. No. I was not, if such was the case.  
15 Also, if I may make a point, I was at Hill &  
16 Knowlton at this time, and I am not sure that CTR  
17 was a client of Hill & Knowlton at the time.

18 Regardless, I don't recall this or  
19 anything related to it whatsoever.

20 Q. Okay. And then Mr. Yeaman, let me back  
21 up a minute, all of the individuals, both the

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1 author and the recipients of this document, were  
2 lawyers, correct?

3 A. I don't recall who Russell is, and I  
4 don't know if, I know I remember Fred Haas was  
5 with Liggett & Meyers and Hetsko, American, and  
6 Ramm with R.J. Reynolds.

7 I don't remember Russell. Oh, was that  
8 John Russell? He was with a law firm that  
9 represented -- I don't know who Smith was, unless  
10 it was William Smith of Reynolds. I don't know  
11 if he was a lawyer. I know he was a chief  
12 executive officer, either president or chairman  
13 at one point.

14 So I can't really speak for the last  
15 two, unless somebody jogs my memory a bit.

16 Q. Now, under the item I just read,  
17 regarding the proposed research, there are six,  
18 seven different research items, correct?

19 A. Yes.

20 Q. Now, under the first one, from some  
21 institute in Italy, correct? You see that?

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1 A. Yes.

2 Q. And then under action, with respect to  
3 that research proposal, it reads: "Action: To  
4 be submitted to SAB, CTR; if not approved, the  
5 project will be carried out by CTR under its  
6 Special Projects."

7 Do you see this?

8 A. Yes.

9 Q. Were you ever aware at any point in  
10 time, that there were projects, that if they were  
11 not approved by the Scientific Advisory Board of  
12 CTR, they would nonetheless be carried out by CTR  
13 under the Special Projects?

14 MR. KLUGMAN: Objection to the form,  
15 particularly the portion "carried out by CTR."  
16 Go ahead.

17 A. No. This would, is not done the way  
18 this says, regardless of who authored it. I mean  
19 if it were going to the SAB, the scientists  
20 involved would have to fill out a CTR  
21 application.

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1 Q. Right. And this says that with respect  
2 to that project, that was recommended by the  
3 general counsel, that if the SAB, the Scientific  
4 Advisory Board, did not approve that research,  
5 what would happen, according to this document?

6 A. I don't know what would happen.

7 Q. Well, what does the document say would  
8 happen?

9 A. Well, it says it would be done under  
10 Special Projects.

11 Q. By whom?

12 A. By CTR.

13 Q. Now, if you look at the third page. In  
14 the middle of the page, after these seven  
15 different projects and the various actions that  
16 were taken on these, it reads:

17 "The Ad Hoc Committee submitted its  
18 priorities selected from the recommendations for  
19 specific research presented to general counsel at  
20 an earlier meeting. References hereinafter will  
21 appear from those proposals. The Ad Hoc

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1 Committee divided the proposals referred to into  
2 three categories. Category A, projects  
3 essentially of adversary value. These are  
4 considered to have a relatively high priority.  
5 Category B, research having a generally defensive  
6 character. Category C, basic research."

7 Do you see that?

8 A. Yes.

9 Q. Did your committee ever prioritize  
10 research in any manner?

11 MR. KLUGMAN: Objection. Is this the  
12 Research Liaison Committee you are talking  
13 about?

14 MR. KRISTAL: Yes.

15 MR. KLUGMAN: I don't know that that is  
16 Mr. Zahn's committee, but with that  
17 clarification, you can go ahead, Mr. Zahn.

18 A. I don't recall.

19 Q. The document continues: "Detailed  
20 consideration was given to the following projects  
21 under category A. There follows my notes of the

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1 action taken."

2 Now, category A were projects which  
3 were essentially of adversary value, do you see  
4 that?

5 A. Yes.

6 Q. Did you have an understanding that that  
7 was for purposes of defending litigation?

8 A. I have no --

9 MR. KLUGMAN: Objection to the form.

10 A. I have no idea.

11 Q. If CTR was conducting research that  
12 had, as its purpose, assisting the lawyers for  
13 the tobacco industry in defending litigation, in  
14 your opinion, is that appropriate or  
15 inappropriate?

16 MR. KLUGMAN: Objection to the form.  
17 No foundation, hypothetical, vague and ambiguous,  
18 argumentative.

19 A. It is not for me to say what is  
20 appropriate or not appropriate. If CTR wants to  
21 do this, and doesn't ask me, I have nothing to

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1 say about that.

2 Q. Would it be consistent or inconsistent  
3 with your understanding of the purpose for CTR?

4 A. It is not inconsistent with it at all.

5 Q. Okay. The purpose of CTR, in your  
6 opinion, was to conduct impartial research on  
7 various health related issues?

8 MR. KLUGMAN: Objection to the form.

9 A. Yes.

10 Q. And in your opinion, if CTR was doing  
11 research, which was designed to assist tobacco  
12 industry lawyers in defending litigation, that is  
13 consistent with the basic primary purpose?

14 MR. KLUGMAN: Objection to the form.

15 A. If the research is done by a recognized  
16 scientist, a legitimate scientist, at a  
17 legitimate institution, and the scientist puts  
18 his name to the findings, what's wrong with  
19 that?

20 Q. Okay. Did you ever hear at any point  
21 in time that you were working for CTR that part

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1 of the Special Projects were designed to develop  
2 witnesses for the tobacco industry in  
3 litigation?

4 MR. KLUGMAN: Objection to the form.

5 A. As I have told you, I believe, several  
6 times, I was aware of Special Projects, but I  
7 really, I know who did some of them, but I had no  
8 recollection of anything on that point  
9 whatsoever.

10 Q. And then the various projects that had  
11 been previously submitted, according to this  
12 memo, various actions were taken. For example,  
13 the first project, "approve for handling by CTR  
14 Special Projects."

15 A. Yes.

16 Q. Did CTR approve that?

17 MR. KLUGMAN: Objection to the form.  
18 Lack of foundation.

19 A. I don't even know which project that  
20 is, and I just could not say.

21 Q. Do you know in the CTR Special Projects

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1       were approved by CTR or approved by some other  
2       group?

3               MR. KLUGMAN:   Objection to the form.

4               MR. PADMANABHAN: Objection.

5               A.     I have no idea.

6                       (Whereupon, Zahn Deposition  
7       Exhibit No. 11, memo to file from R. B. Seligman  
8       dated November 17, 1978, marked.)

9               Q.     Let me show you Exhibit 11, which is  
10       dated November 17, 1978, from Mr. Seligman to CTR  
11       file.   Subject meeting in New York, November 15,  
12       1978.

13               MR. PADMANABHAN: I know Brown &  
14       Williamson, Philip Morris, Lorillard and R.J.  
15       Reynolds have asserted claims of attorney-client  
16       privilege to this document and would object to it  
17       on that basis, to all questions relating to this  
18       document.

19               Q.     The memo references a meeting between  
20       general counsel of Brown & Williamson,  
21       Mr. Pepples, the general counsel of R.J.

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1 Reynolds, Mr. Tucker, Mr. Finnegan, Tim Finnegan  
2 retained counsel, Bill Shinn of Shook, Hardy &  
3 Bacon, Arnold Henson, general counsel of American  
4 Tobacco, Janet Brown, retained counsel CTR, Wally  
5 Hughes, vice-president of Brown & Williamson,  
6 Alex Spears, vice-president of Lorillard, Jim  
7 Bowling, senior vice-president corporate affairs  
8 Philip Morris, Bob Seligman, vice-president  
9 Research and Development, Philip Morris, Tom  
10 Osdene, Director of Research, Philip Morris.

11 Is that correct? Did I read that  
12 accurately?

13 A. Yes.

14 Q. And you have known all of these people  
15 for many years?

16 MR. KLUGMAN: Objection to the form.  
17 Look through them.

18 A. I knew some of them for many years.  
19 Some I did not know. I knew Henson for a while.  
20 I think I did. But Seligman, I think I last time  
21 I was asked about him, I couldn't recall who he

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1 was.

2 Q. Okay.

3 A. But I do remember, I remembered  
4 afterwards, because he lives or did live at the  
5 time or at one time here in Great Neck.

6 Q. Now, November, 1978, was at a time when  
7 you, Leonard Zahn Associates, was consulting with  
8 CTR in a public relations capacity.

9 MR. KLUGMAN: Got to wait until he  
10 finishes.

11 A. Yes.

12 Q. Document reads: "At the outside Arnold  
13 Henderson reminded all the participants of the  
14 meeting that there should be no written record of  
15 what transpired for distribution. It was  
16 perfectly all right to keep notes, which you  
17 would keep in your own personal file. The  
18 current meeting was called to help an ad hoc  
19 committee selected by the chief executives of the  
20 tobacco industry do long-range policy planning in  
21 regard to smoking and health."

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1           Were you aware that there had been an  
2       Ad Hoc Committee selected by the chief executives  
3       of the tobacco industry to do long-range policy  
4       planning in regard to smoking and health?

5           MR. KLUGMAN:   Objection to the form.

6           A.    I have heard the name, I think, of Ad  
7       Hoc Committee.   Whether it was -- was it a  
8       research committee or a legal committee, I just  
9       don't know.   I just don't recall.

10          Q.    Did you ever ask anybody what is this  
11       Ad Hoc Committee?

12          MR. KLUGMAN:   Objection to the form.  
13       Is there some suggestion here that he was aware  
14       of it?

15          MR. KRISTAL: I thought he just said he  
16       was aware of it.

17          MR. KLUGMAN:   Not the one in the  
18       document, the one he testified about it.

19          Q.    You have heard in your work for CTR of  
20       an Ad Hoc Committee, correct?

21          A.    Mr. Kristal, I don't know if I did or

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1 did not.

2 MR. KLUGMAN: I misunderstood.

3 THE WITNESS: Maybe I did or was told,  
4 but I just don't remember.

5 Q. The document continues: "On the Ad Hoc  
6 Committee are representatives of all legal,  
7 public relations -- strike that. Let me start  
8 again.

9 "On the Ad Hoc Committee are  
10 representatives of legal, public relations and  
11 research executives of various companies. Any  
12 long-range plans which are developed are to be  
13 made known to the individual companies through  
14 their chief counsel. The Ad Hoc Committee is to  
15 consider policy questions in general and,  
16 particularly, grants, contracts, the fate of CTR,  
17 et cetera."

18 Were you aware of any committee  
19 comprised of the legal, public relations and  
20 research executives of the various companies that  
21 were considering policy questions with respect to

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1 grants and contracts and the fate of CTR?

2 A. There may have been. I may have been a  
3 member of it, or advisory to it or representing  
4 CTR. I just do not recall.

5 Q. The document continues:

6

7

8

9

10

11

Do you see that?

12

A. Yes. Excuse me.

13

14

15

16

17

18

19

20

21

REDACTED

Q. Was it your understanding that TIRC had  
been set up in 1954 as an industry shield?

MR. KLUGMAN: Objection to the form.  
Lack of foundation, vague, ambiguous,  
argumentative.

A. I don't recall I ever used the word  
"shield."

Q. I'm asking you if it was your  
understanding that that was the purpose for which

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1 it was set up?

2 A. No.

3 Q. You know Bill Shinn, right?

4 A. Yes.

5 Q. He was an attorney?

6 A. Yes.

7 Q. Did you ever ask him about the history  
8 of CTR?

9 A. I thought I knew the general history of  
10 it. Why would I ask him? No. I did not. I'm  
11 not trying to be flip.

12 Q. The document continues:

13  
14  
15 REDACTED  
16  
17  
18

19 Were you aware that CTR had served that  
20 function?

21 MR. KLUGMAN: Objection to the form.

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1 A. No. No, I am not.

2 Q. Did anybody ever discuss that with you?

3 A. No, but I knew that help, if you want  
4 to call it that, was given. I remember Charlie  
5 Sommers, Dr. Sommers, appearing before committee  
6 hearings, at committee hearings in Washington,  
7 Congressional committees, and things of that  
8 kind.

9 I was aware of that in regard to  
10 certain legislation. I am really not sure what  
11 specific matters brought him there, but he did go  
12 there. That I know.

13 Q. Were you aware that CTR had helped give  
14 legal counsel advice and technical information  
15 needed at court trials?

16 MR. KLUGMAN: Objection to the form.

17 A. I don't know what that really means,  
18 advice and technical information.

19 Did a lawyer at a trial call  
20 Dr. Sommers and ask him something in a medical  
21 area, you know, to get an opinion, I don't know.

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1 I don't know.

2 Well, I do, yes. Dr. Little did  
3 testify at a trial in New Orleans, I believe.

4 Did Hockett or some -- I just don't  
5 remember that. But I do remember Dr. Little  
6 testifying.

7 Q. Okay. The document continues:

8  
9 **REDACTED**

10 That you are familiar with?

11 A. Yes.

12 Q.

13 **REDACTED**

14 Would you agree or disagree with that?

15 MR. KLUGMAN: Objection to the form.

16 A. Did grantees, did some of the grantees  
17 testify? That probably did happen.

18 Q. That's not the question I'm asking.

19 Did the money spent at CTR provide a base for  
20 production of witnesses?

21 MR. KLUGMAN: Objection.

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1 MR. PADMANABHAN: Objection. Asked and  
2 answered.

3 A. I don't know what that means.

4 Introduction of witnesses to whom?

5 Q. If you don't know what it means, then  
6 I'll move on. Is that your answer?

7 A. I'm not sure what, you know, what it  
8 does mean.

9 Q. The document continues:

10  
11 REDACTED  
12

13 Do you see that?

14 A. Yes.

15 Q. That's inappropriate, isn't it?

16 MR. KLUGMAN: Objection to the form.

17 A. That is what?

18 Q. Inappropriate.

19 MR. KLUGMAN: Objection.

20 A. I would not use that term.

21 Q. What term would you use?

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1 MR. PADMANABHAN: Objection to the  
2 form.

3 MR. KLUGMAN: Objection to the form of  
4 the question. Go ahead.

5 A. On these projects, CTR has provided  
6 funding, I would guess, if I am reading this  
7 properly or correctly.

8 Q. It is written here that Mr. Shinn  
9 said:

**REDACTED**

10 Do you see that?

11 A. Yes.

12 Q. Did I read that correctly?

13 A. Yes.

14 Q. You don't think that's inappropriate  
15 given CTR's mission?

16 MR. PADMANABHAN: Objection, asked and  
17 answer as well as argumentative.

18 MR. KLUGMAN: Object. Your tone as  
19 well as the form of the question are  
20 argumentative. You can go ahead and answer.

21 A. No. I don't. And if I remember

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1 correctly, there have been published scientific  
2 reports with the source being printed by the  
3 author as resulting from a special project from  
4 CTR.

5 I may be wrong in that, but I think I  
6 do remember some things like that. They may even  
7 have gone, they would have gone in the annual  
8 report, because they credited CTR with support.

9 MR. KRISTAL: Move to strike the  
10 nonresponsive portions of that answer.

11 Q. The document continues:

12  
13 REDACTED

14  
15 Do you see that?

16 A. Yes.

17 Q. Did you ever have any discussions with  
18 CTR regarding their reluctance to serve in the  
19 capacity as a front?

20 MR. KLUGMAN: Objection to the form.

21 A. Never was aware that it served as a

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1 front, my understanding of the term.

2 Q. Okay. Now, so if I understand what you  
3 are saying is: You don't know if it did serve as  
4 a front or if it didn't serve as a front. You  
5 are unaware one way or the other.

6 MR. KLUGMAN: Objection to the form.

7 MR. PADMANABHAN: Objection.

8 MR. KRISTAL: Is that fair to say?

9 A. Yes. That is true. I will not argue  
10 the semantics of the word "front", the meaning.

11 Q. If you look on the next page of the  
12 document, it continues:

13  
14  
15  
16  
17  
18  
19  
20  
21  
REDACTED

19 Was that ever discussed in your  
20 presence?

21 MR. KLUGMAN: Objection to the form.

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1 A. No. But I seem to be living it right  
2 now.

3 Q. Doing quite a fine job.

4 A. Thank you.

5 Q.

REDACTED

6  
7  
8  
9 Now, that was the function that you  
10 served for CTR, was it not, public relations?

11 MR. KLUGMAN: Objection to the form.

12 A. I was a public relations consultant to  
13 the Council, yes.

14 Q. Was there any other public relations  
15 consultant to the Council after 1969 until you  
16 retired in 1994, other than Leonard Zahn &  
17 Associates?

18 A. Not that I know of. But, of course,  
19 you testify that every member of a client is a  
20 public relations expert.

21 Q. The document reads: REDACTED

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REDACTED

Now, you would agree at that time frame, this is shortly before you issued Exhibit 1, which was the press release, that it was the CTR's position that it did not agree that the case against smoking was closed, correct?

A. Yes.

Q.

REDACTED

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REDACTED

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21

Do you see that?

A. Yes.

Q. Was that your understanding, that there was a CTR basket which had to be maintained for public relations purposes?

MR. KLUGMAN: Objection to the form.

A. I'm not sure what he means by a basket and again as I said a moment ago, everybody is a public relations expert.

Q. Did you ever discuss that with Mr. Shinn?

A. I don't think so. I don't recall ever having done so.

(Whereupon, Zahn Exhibit No. 12, notes of meeting of Committee of General Counsel dated September 10, 1981, was marked for identification.)

MR. KRISTAL: I give you Exhibit 12, which is a document dated September 10, 1981.

THE WITNESS: It is 12:30.

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1 MR. KLUGMAN: I was going to say,  
2 Jerry, if we can take a look at it. Ramm can do  
3 what we can do what we have to do. I want to talk  
4 about the schedule with the witness for a minute.  
5 Can he have the document and we won't show it to  
6 the witness, just so we can save that two  
7 minutes, now that I've talked about it for one  
8 minute.

9 MR. KRISTAL: Let me identify the  
10 document, and you can make your objection and we  
11 the can take a lunch break.

12 Exhibit 12 is dated September 10, 1981,  
13 notes of meeting of committee of general counsel  
14 held on September 10, 1991.

15 MR. KLUGMAN: Okay.

16 MR. KRISTAL: And it is eight pages of  
17 the notes of the meeting.

18 MR. PADMANABHAN: Defendants would  
19 object on the basis of attorney-client privilege  
20 and work product. On that basis, we object to  
21 any questions about this document.

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1 MR. KLUGMAN: Before we go off the  
2 record, let me see where we are. At the last  
3 session, you said you would have 45 minutes or an  
4 hour. We are in excess of three hours now. I  
5 would like to know where we are going in  
6 deference to Mr. Zahn and his schedule.

7 MR. KRISTAL: Why don't we do this off  
8 the record? No need to do it on the record.

9 MR. KLUGMAN: That's what you said. I  
10 don't care. I just want to know. I don't care if  
11 it is on the record or not.

12 VIDEO OPERATOR: Going off the record  
13 at 12:36.

14 (Discussion off the record.)

15 (Lunch.)

16 MR. PADMANABHAN: Over the break, we  
17 learned that certain exhibits to which we had  
18 tentatively claimed privilege subject to a  
19 further review are not subject to claims of  
20 privilege, and so based on that understanding, we  
21 would withdraw our claims with respect to the

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1 following exhibits: Exhibit 3, Exhibit 4,  
2 Exhibit 5, Exhibit 6, Exhibit 8. That's it.

3 MR. KRISTAL: Thank you.

4 (Discussion off the record.)

5 VIDEO OPERATOR: Back on the record,  
6 the time is 1:53.

7 Q. Good afternoon, Mr. Zahn.

8 A. Good afternoon.

9 Q. We were about to discuss Exhibit 12,  
10 which are the notes of meeting of committee of  
11 general counsel, held on September 10, 1981.

12 And it lists the attendees at this  
13 meeting. The first group were listed as general  
14 counsel, Witt, Stevens, Jamie Cherry, Fred Neuman  
15 and a representative of Brown & Williamson.

16 Do you see that?

17 A. Yes.

18 Q. To your knowledge, were those people,  
19 the named people, general counsel of tobacco  
20 companies?

21 A. I can only speak about Stevens. I

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1 think I remember Witt. The name Jamie Cherry and  
2 Fred Neuman, the names Jamie Cherry and Fred  
3 Neuman, I don't remember at all.

4 Q. And then also attending were  
5 individuals who were listed as "litigating  
6 lawyers." Do you see that?

7 A. Yes.

8 Q. Brown, Jacob, Finnegan, Sarridge,  
9 Shinn, Bezanson.

10 A. No, it's Bezanson.

11 Q. Thank you. B-e-z-a-n-s-o-n?

12 A. Yes.

13 Q. Northrip and it looks like FMD?

14 A. That's what it looks like.

15 Q. And it was your understanding that  
16 those people listed there were litigating lawyers  
17 for various tobacco companies?

18 A. I know that, I know all, if it is Janet  
19 Brown, the first one, I know the names, Bezanson,  
20 I don't know who are the initials, who is the  
21 initial that is here, and I didn't know that they

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1       were all litigators or whatever. I knew they  
2       were lawyers for various companies.

3           Q.    Finnegan is Tim Finnegan, do you recall  
4       him?

5           A.    Yes.

6           Q.    He was with the law firm of Shook,  
7       Hardy & Bacon?

8           A.    No.

9           Q.    What law firm was he with?

10          A.    He was Jacob Medinger, ultimately Jacob  
11       Medinger & Finnegan, he became a partner, a named  
12       partner.

13          Q.    We'll get to it in a little while, but  
14       do you recall serving on a subcommittee of a Task  
15       Force involving the Fourth World Conference on  
16       Smoking and Health with Mr. Senkus and  
17       Mr. Finnegan?

18          A.    I think so, but I am not sure. I would  
19       not be surprised if that did happen that way.

20          Q.    We have some documents I'll show you  
21       and I think it may help you recall that.

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1           The document starts, one, Special  
2       Projects and just so the jury can understand the  
3       format of this document. There is a name listed  
4       and then there is text opposite the name, and  
5       that is throughout most of the document; is that  
6       correct?

7           A.     Yes.

8           Q.     The first one reads:

9

10

11

**REDACTED**

12

13

14

15

Do you see that?

16

A.     Uh-huh. Yes.

17

18

19

Q.     Did you have any understanding that the  
Special Projects origin was in the litigating  
lawyer needs?

20

A.     No. I did not.

21

Q.     And then the document goes on:

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1  
2 REDACTED  
3

4 Did you have any understanding as to  
5 whether or not either one of those was the  
6 purpose of a special project?

7 MR. KLUGMAN: Objection to form.

8 A. No. I did not.

9 Q. Under Stevens or next to Stevens' name,  
10 it is written:

11  
12 REDACTED  
13

14  
15  
16  
17 REDACTED  
18

19  
20  
21 Do you see that?

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1 A. Yes.

2 Q. Did Mr. Stevens ever discuss with you  
3 wanting to make Special Projects invulnerable to  
4 attack?

5 A. Not that I remember.

6 Q. The Aviado that is listed there?

7 A. Aviado.

8 Q. A-v-i-a-d-o, that was Domingo Aviado?

9 A. Yes. I believe so.

10 Q. And he had done research for CTR?

11 MR. KLUGMAN: Objection to form.

12 A. I don't remember whether he was a  
13 grantee or not. I would have to see an annual  
14 report, you know, to be sure that I would  
15 remember correctly.

16 Q. All right. If you look at the third  
17 page of this document next to Jacob's name. It  
18 states:

19

20

21

REDACTED

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1 REDACTED

2 Do you see that?

3 A. Yes.

4 Q. Was it ever discussed in any liaison  
5 committees or at any time you were involved in  
6 consulting to CTR, that it was necessary to keep  
7 a doctor busy, or he would lose interest?

8 MR. KLUGMAN: Objection to form.

9 A. Perhaps so. I just don't remember.

10 Q. Next to Mr. Witt's name, the document  
11 states:

12 REDACTED

13 Do you see that?

14 A. Yes.

15 Q. That is not consistency with CTR's  
16 stated purpose, is it?

17 MR. KLUGMAN: Objection to the form.

18 A. I would say no.

19 Q. Stevens, next to his name it says:  
20  
21

REDACTED

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1  
2  
3 REDACTED  
4

5 Do you see that?

6 A. Yes.

7 Q. In your mind, at any point in time when  
8 you consulted for CTR, was there a distinction  
9 between Special Projects, between lawyers'  
10 Special Projects and CTR Special Projects?

11 MR. KLUGMAN: Objection to form.

12 A. I don't recall ever hearing a  
13 discussion about any difference between these  
14 two.

15 Q. The document continues:  
16

17  
18 REDACTED  
19  
20

21 Do you see that?

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1 A. Yes.

2 Q. Do you know who Janice was?

3 A. I don't remember the name.

4 Q. Was there ever any discussion about  
5 getting money into the hands of various  
6 researchers?

7 A. Well, I'm sure there was. I just  
8 cannot recall any, though.

9 Q. Was there ever any discussion about  
10 getting money into the hands of researchers, in  
11 order to cultivate witnesses for litigation  
12 purposes?

13 A. I don't remember any such, any meetings  
14 at any meetings I was at.

15 Q. And then the document continues next to  
16 Mr. Jacob's name, it states:

17

18

19

20

21

REDACTED

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1 REDACTED

2 Do you see that?

3 A. Yes.

4 Q. Did you ever discuss with any of the  
5 Scientific Directors that you had contact with  
6 during the years that you consulted with CTR  
7 about this distinction between whatever he or she  
8 may have liked, and what became a lawyers'  
9 project?

10 MR. PADMANABHAN: Objection, lacks  
11 foundation.

12 MR. KLUGMAN: Objection.

13 A. I can't ever remember talking about any  
14 kind of special project with whoever was  
15 Scientific Director.

16 Q. Okay. On the next page at the top,  
17 next to Jacob's name:

18  
19 REDACTED  
20  
21

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1 Do you recall any discussion or concern  
2 being raised with a researcher by the name of  
3 Speilberger with respect to the FTC?

4 A. I don't remember the name. If it does,  
5 I have forgotten it. Doesn't sound familiar to  
6 me. Speilberger. No.

7 Q. With respect to Aviado where Mr. Jacob  
8 apparently said **REDACTED**  
9 anybody ever discuss with you  
10 protecting Special Projects by putting it under  
11 the lawyers' dominium?

12 MR. KLUGMAN: Objection to the form.

13 A. I can't recall that.

14 Q. Before I mark the next exhibit, let me  
15 switch gears in terms of topics.

16 A. Oh, I'm sorry.

17 Q. You recall a group called the  
18 International Committee on Smoking Issues, ICOSI  
19 is the acronym?

20 A. When you say ICOSI, yes, it sounds  
21 familiar. But the full name I just can't connect

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1 with it. I don't remember it.

2 Q. Let me give you a document and see if  
3 that refreshes your memory what ICOSI was.

4 Do you recall doing work for ICOSI?

5 A. I may well have, but I don't remember.

6 Q. You earlier mentioned you remembered  
7 work you did for Philip Morris in Europe. What  
8 did that entail?

9 A. I prepared a publication for Philip  
10 Morris Europe that they provided to employees,  
11 perhaps, distributors, others. I don't know the  
12 full distribution list.

13 Q. The subject was smoking and health?

14 A. Yes.

15 Q. Was it a scientific review of  
16 articles? What type of document was it?

17 MR. KLUGMAN: Objection to form.

18 Q. Well, strike that. What type of  
19 document was it?

20 A. You mean --

21 Q. I don't mean the format. What was the

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1 subject matter within smoking and health?

2 A. These were published articles on  
3 smoking and health. Now, when I say published,  
4 to be totally clear about it, some of them were  
5 in a scientific or medical journals. Others were  
6 in newspapers, you know, lay publications, not  
7 scientific by any stretch of the imagination.

8 Q. Did you also incorporate into that  
9 document any internal research done by any  
10 tobacco company or CTR?

11 MR. KLUGMAN: Objection to the form. I  
12 don't know what you are talking about internal  
13 research by CTR, but go ahead.

14 A. I can't recall, but I don't believe  
15 so. I would use only material that was part of a  
16 public record somewhere.

17 Q. And the time frame was mid 1970's, when  
18 you this consultation with Philip Morris?

19 A. I'll take your word for that.

20 Q. No. I'm asking you.

21 A. I would guess so, but I'm unsure about

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1 the period of time.

2 Q. And your contact was Mr. Isenring?

3 A. Yes.

4 Q. Do you also remember Jules Hartogh,  
5 H-a-r-t-o-g-h?

6 A. Yes.

7 Q. He was with Philip Morris in Europe,  
8 was he not?

9 A. Yes.

10 Q. And he was in the late 1970's  
11 vice-president with respect to corporate  
12 affairs?

13 A. I believe so. I am not sure about the  
14 time period.

15 MR. KRISTAL: Let me mark as Exhibit 13  
16 a document entitled ICOSI, International  
17 Committee on Smoking Issues, and it is dated  
18 April, 1979. And we'll get into some of the  
19 content, but if you look at the last page.

20 MR. KLUGMAN: Hold on a second.

21 MR. KRISTAL: Counsel is looking at the

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1 document. Is it okay for Mr. Zahn to look at  
2 it?

3 MR. KLUGMAN: Sure.

4 A. Can I look at the first page just to  
5 refresh my memory?

6 Q. We're going to go over some of those  
7 things. I'm trying to refresh your memory by  
8 showing you your name in back.

9 On page 13, the page is entitled Philip  
10 Morris representation within ICOSI, and it has a  
11 list of various titles of groups and then a list  
12 of people and under the Task Force covering  
13 Fourth World Conference on Smoking and Health,  
14 you were listed as a consultant-scientific  
15 journalist, under Mr. J.M. Hartogh, who is listed  
16 as the chair of the Task Force?

17 A. Yes.

18 Q. R. M. Corner, do you recall Richard  
19 Corner?

20 A. First time I have heard that name in  
21 many, many years.

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1 Q. He was deposed yesterday in Manhattan.  
 2 A. He is still alive.  
 3 MR. KLUGMAN: I hope so. He was in the  
 4 morning anyhow.  
 5 THE WITNESS: I hope he still is today.  
 6 Q. Do you remember Mr. Whist, W-h-i-s-t?  
 7 He was with Philip Morris in Australia?  
 8 A. I didn't know him when he was there. I  
 9 knew him when he came to New York.  
 10 Q. And then Don Hoel, he was a lawyer from  
 11 the U.S., right, H-o-e-l?  
 12 A. Yes.  
 13 Q. And yourself was on the committee?  
 14 A. Yes.  
 15 Q. Let's go to the front of the document  
 16 where you were, and I'll read you some of it and  
 17 see if it helps you recall some of your  
 18 participation in the Task Force and ICOSI in  
 19 general.  
 20 Under the reason and objectives the  
 21 document reads: "The problems and attacks

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1 proposing restrictions of smoking and normal  
2 commercial activities like advertising and  
3 publicity, have become highly international.  
4 Examples in one country are used to attach the  
5 industry in another. No one industry in one  
6 country, nor any one company, can wage and win  
7 the battle against this sort of organized  
8 worldwide attack. The resources are just not  
9 available to collect all the evidence required,  
10 nor to prepare counter attacks on a separate  
11 basis. The whole industry, companies and trade  
12 associations alike, must unite with common  
13 targets and common approaches."

14 Do you see that?

15 A. Yes.

16 Q. Does that help you recall at least the  
17 thrust of the reason behind the formation of  
18 ICOSI?

19 MR. KLUGMAN: Objection to the form.

20 A. Not really, Mr. Kristal. I remember  
21 there was an organization of this kind, and, of

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1 course, I, when you asked me before if I had ever  
2 done any work for anything other than in Europe  
3 for Philip Morris, I said no, that was all I  
4 could remember.

5 Obviously, I was wrong, I must have  
6 done some work for this committee and charged  
7 them separately, I mean as a client on a project  
8 basis.

9 And I am also reminded that I did do a  
10 project job for Philip Morris in New York on one  
11 occasion when Andrew Whist's name came before  
12 me.

13 I don't recall any other deposition  
14 where I was asked about or where his name  
15 appeared. Andrew wanted me to cover a meeting in  
16 Sao Palo. And I really didn't want to go, and I  
17 told him I didn't want to go. But the money was  
18 good, so I did go down and cover the meeting, a  
19 scientific meeting.

20 Q. Now, the second item under reasons and  
21 objectives reads:

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1           "Therefore, seven companies who  
2       conduct business in more than one country,  
3       decided to set up ICOSI. These founder companies  
4       are B.A.T., Gallaher, Imperial, Philip Morris,  
5       Reemtsma, Reynolds and Rothman's."

6           Do you see that?

7           A.    Yes.

8           Q.    Do you recall that those are the  
9       members of ICOSI?

10          A.    I have no idea. I will assume that  
11       they were.

12          Q.    Now, if you turn to page five where it  
13       says:

14                "Lead companies responsible for  
15       communications with each country."

16          You see the first paragraph is talking  
17       about ICOSI member communications with the  
18       relevant trade associations? You see that?

19          A.    Yes.

20          Q.    Is it correct that you were aware that  
21       the tobacco industry had trade associations in

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1 many countries throughout the world?

2 MR. KLUGMAN: Objection to the form.

3 A. Well, I knew they had in companies that  
4 I visited. I believe they did, because I did  
5 meet some of the people.

6 Q. I think you meant to say in the  
7 countries that you visited. You said companies  
8 by accident.

9 A. I'm sorry. Countries, you are right.

10 Q. For example, the Tobacco Institute was  
11 the U.S. tobacco industry trade association?

12 A. There was a --

13 Q. First of all you need to say whether  
14 that's correct or not.

15 A. Yes. There was an organization in  
16 France, and I met the woman who ran that.

17 Q. Do you recall Verband from Germany?

18 A. Verband, I, of course, met Franz  
19 Adlkofer a number of times at meetings. In Sao  
20 Palo, although I'm not sure, but I know in Rio,  
21 in Argentina, I was introduced, in fact, if I

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1 remember correctly, there was a luncheon at which  
2 I met and spoke briefly with representatives of  
3 the tobacco companies in that country.

4 I am trying to think of other places.  
5 England, yes, of course, England. I was there a  
6 number of times at which I would attend a  
7 luncheon called for company people to ask me  
8 questions, and I would make a little presentation  
9 to them.

10 Q. Do you recall a working party in ICOSI  
11 called SAWT, Social Acceptability Working Party?

12 A. No. I do not.

13 Q. If you would turn to page eleven of  
14 this document. Item four references the Task  
15 Force concerning the Fourth World Conference on  
16 Smoking and Health, under the chair of J. M.  
17 Hartogh?

18 A. Yes.

19 Q. It reads: The Task Force covering the  
20 Fourth World Conference on Smoking and Health  
21 under the chairmanship of Mr. J.M. Hartogh of

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1 Philip Morris is planning to monitor and come  
2 back on the spot strong propaganda expected to be  
3 generated at this conference, which takes place  
4 in Stockholm, Sweden in June and is sponsored by  
5 the World Health Organization and the Swedish  
6 health authorities; do you see that?.

7 A. Yes.

8 Q. You attended that conference, did you  
9 not, in Stockholm, Sweden?

10 A. Yes. I did.

11 Q. And that was, in fact, sponsored by, at  
12 least one of the sponsors was the World Health  
13 Organization?

14 MR. KLUGMAN: Objection to the form.

15 A. It says that here. I'm sure it was. I  
16 don't remember.

17 MR. KRISTAL: All right. We'll get to  
18 some documents that may help you recall that.

19 Let me mark as Exhibit 14 a document  
20 dated September 26, 1978, from Mr. Kloepper to  
21 Mr. Kornegay and Tom Frankovic.

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1 THE WITNESS: Kloopfer is the way you  
2 pronounce it.

3 (Whereupon, Zahn Deposition  
4 Exhibit No. 14, memo from Kloopfer to Kornegay  
5 and Frankovic, dated September 26, 1978, marked.)

6 MR. KRISTAL: Now, this --

7 MR. KLUGMAN: Hold on one second.  
8 Okay. You can look at it, Mr. Zahn.

9 Q. Who is Tom Frankovic?

10 A. I do not know. I don't remember him.

11 Q. The memo references a visit by  
12 Mr. Hartogh along with a woman by the name of  
13 Mary Covington?

14 A. Yes.

15 Q. Ms. Covington was also a Philip Morris  
16 employee?

17 A. Yes. She was. In Europe -- yes, I  
18 know she was at one period. I remember her, yes.

19 Q. Do you also recall that she became  
20 Secretary General of ICOSI at one point in time?

21 A. Was ICOSI in Brussels?

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1 Q. Yes.

2 A. Yes. I remember now, yes.

3 Q. They were based in, do you recall,  
4 Liggett & Meyers' office space that was being  
5 leased by Philip Morris in Brussels?

6 A. I'm sorry, Liggett & Meyers?

7 Q. Office space being leased by Philip  
8 Morris?

9 A. I never knew that.

10 Q. Now, the document references at the  
11 last sentence of the second paragraph: "A new  
12 one headed by Hartogh is charged with  
13 coordination of industry coverage of the Fourth  
14 World Conference on Smoking and Health."

15 Do you see that?

16 A. Yes.

17 Q. Then the next to the last  
18 paragraph: "Mr. Hartogh was reporting that he  
19 might be the captain of an international team at  
20 the Fourth World Conference."

21 Do you see that?

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1 A. Yes.

2 Q. Is it correct that at various world  
3 conferences, the tobacco industry would send a  
4 group to monitor the situation, to issue press  
5 releases as the conference was going on?

6 MR. KLUGMAN: Objection to the form.

7 A. I do know that The Institute did attend  
8 some of these meetings in that regard, yes.

9 Q. And, for instance here there is an  
10 American Cancer Society forum that is referenced  
11 there. Do you see that?

12 A. Yes.

13 Q. Did you attend the American Cancer  
14 Society forum?

15 A. I don't know which one they are talking  
16 about. Well, it had to be the Science Writing  
17 Forum.

18 Q. That you attended?

19 A. No. I never did attend one of those.

20 Q. Did you ever attend any conference,  
21 other than Stockholm which we are going to get

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1 to, in 1979, did you ever attend any conference  
2 at any time where it was your function to serve  
3 as public relations consultant to issue  
4 on-the-spot press releases to rebut something  
5 that occurred during the conference?

6 A. Well, first, I cannot recall any other  
7 conference I attended to do something that I  
8 would handle in a public way.

9 But it was either The Institute or in  
10 the Stockholm case, ICOSI, that had the ability  
11 to set up a facility at the meeting and to issue  
12 a statement.

13 Q. Now, do you recall that ICOSI would  
14 never take a public position, always took a low  
15 profile and would direct statements to other  
16 groups?

17 MR. KLUGMAN: Objection to the form.

18 A. Not aware of that. I'm just unfamiliar  
19 with how it operated.

20 (Whereupon, Zahn Exhibit No. 15,  
21 memo from Hartogh to Murray dated October 17,

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1 1978, was marked for identification.)

2 Q. I'll give you Exhibit 15, which is  
3 dated October 17, 1978, Mr. Hartogh to  
4 Mr. Murray. The subject is ICOSI project team  
5 Fourth World Conference on Smoking and Health,  
6 Stockholm, 1979.

7 Do you see that?

8 MR. KLUGMAN: One second.

9 Q. By the way, do you recall there was  
10 someone from the Committee of Counsel, someone  
11 name Haas, H-a-a-s, on one of the other  
12 documents?

13 A. Yes. I mentioned Fred Haas, he was a  
14 lawyer for Liggett & Meyers, I think, yes.

15 Q. On this document, it is reported by  
16 Mr. Hartogh to Mr. Murray that he has assembled  
17 his project team.

18 Do you see that?

19 A. Yes.

20 Q. He lists the members of the team, going  
21 out of order, you are listed as one of the

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1 members of his team?

2 A. Yes.

3 Q. And it says, with respect to you, he  
4 will be our contact man with the conference press  
5 room?

6 A. Yes.

7 Q. Do you recall doing that at that  
8 conference?

9 MR. KLUGMAN: Object to the form.

10 A. I believe so.

11 Q. The other members of Mr. Hartogh's  
12 group, the Fourth World Conference Task Force,  
13 were Murray Senkus of Reynolds. Do you know  
14 Mr. Senkus?

15 A. Yes.

16 Q. He was Scientific Director of  
17 Reynolds?

18 A. I am not sure of his title.

19 Q. Dr. Adlkoefer you already mentioned  
20 with respect to the German trade association?

21 A. Yes.

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1 Q. Mr. Lee, he was a statistician for  
2 something called TAC?

3 A. Yes.

4 Q. You remember Mr. Lee, Peter Lee?

5 A. Yes.

6 Q. TAC is the Tobacco Advisory Council?

7 A. Yes. I believe so.

8 Q. That was a European group, was it not?

9 A. It was English, British.

10 Q. Mr. Hoel of Shook, Hardy & Bacon is  
11 mentioned as being on the team?

12 A. Yes.

13 Q. Christian Vogel, do you recall  
14 Mr. Vogel from the German company Reemtsma?

15 A. I frankly do not remember him.

16 Q. And Paul Isenring from Philip Morris.

17 A. Yes.

18 Q. If you look on the second page: Our  
19 communications center in Stockholm has been set  
20 up in the offices of a public relations firm,  
21 which is five minutes from the convention center

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1 where the conference will be held.

2 In fact, this PR firm is a permanent  
3 advisor to Stockholm's trade fair organization  
4 and as such has a permanent office right in the  
5 convention buildings, so we will even have a  
6 pied-a-terre on the conference's door steps (of  
7 course, operating under the name of this PR  
8 firm)".

9 Do you see that?

10 A. Yes.

11 Q. Do you recall that Mr. Hartogh's Task  
12 Force, the one you were on, was operating out of  
13 the offices of a Swedish public relations firm?

14 A. I just don't remember that.

15 Q. Do you recall that ICOSI -- strike  
16 that.

17 Let me show you another document.

18 Exhibit 16 is entitled meeting of Task  
19 Force, forth World Conference on smoking and  
20 health, Kansas City, November 20-21, 1978,  
21 participants. I'll give you my copy, which is on

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1 recycled paper. Let me give you a clean sheet.

2 You are listed as a participant in a  
3 Task Force that met in Kansas City. This is in  
4 November of '78, this is some eight, nine months  
5 before the June, '79 World Conference. Do you  
6 recall that?

7 A. No. I don't, but I have no doubt I was  
8 there.

9 MR. KRISTAL: I'll give you Exhibit 17,  
10 January 16, 1979.

11 (Whereupon, Zahn Deposition  
12 Exhibit No. 16, minutes of meeting of November  
13 20/21, 1978, marked.)

14 (Whereupon, Zahn Deposition  
15 Exhibit No. 17, letter from Hartogh to Dolleris,  
16 dated January 16, 1979, marked.)

17 MR. KLUGMAN: I have that as 16. Are we  
18 skipping 16?

19 Q. This was are from Mr. Hartogh to an  
20 Axel Dolleris, Public Relations Consultation, in  
21 Copenhagen dated January 16, 1979. The subject

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1 is Fourth World Conference on Smoking and Health,  
2 Stockholm.

3 Do you see that?

4 MR. KLUGMAN: Hold on one second.

5 A. I haven't looked at it yet.

6 MR. KRISTAL: While there is a  
7 decision --

8 MR. KLUGMAN: Go ahead. He can look at  
9 it.

10 MR. KRISTAL: Exhibit 18 is the list  
11 from the Fourth World Conference which lists the  
12 various participants.

13 (Whereupon, Zahn Deposition  
14 Exhibit No. 18, list of participants, marked.)

15 Q. Exhibit 17, the letter reads: "Peter  
16 Axel: I knowledge receipt of and thank you for  
17 your letter of January 11 concerning your work,  
18 our work, in connection with the forthcoming 4th  
19 WCSH. I will reply to your questions and  
20 suggestions one by one.

21 One, contacting Mr. Lars Ramstrom,

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1 during possible contacting of Mr. Ramstrom you  
2 cannot advice him that your clients are either  
3 Philip Morris or ICOSI.

4 Therefore, if you feel that  
5 Mr. Ramstrom might insist on knowing the name of  
6 the client, then please do not, I repeat, do not  
7 contact him."

8 Do you see that?

9 A. Yes.

10 Q. Lars Ramstrom was the Director General  
11 of the National Smoking and Health Association in  
12 Stockholm; do you recall that?

13 A. I didn't know, I knew he was, I recall  
14 now that I see the name, that he was an  
15 organization.

16 Q. Okay.

17 A. But I didn't recall the name of it.

18 Q. Okay. If you look on Exhibit 18, the  
19 list of participants, and it is in alphabetical  
20 order, if you look on the page with the R's,  
21 Mr. Ramstrom is listed as a participant and the

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1 Director General of the National Smoking and  
2 Health Association, Stockholm, Sweden?

3 A. Oh, yes.

4 Q. Now, Exhibit 18 is a brochure. It says  
5 up top: Fourth World Conference on Smoking and  
6 Health, Stockholm, Sweden, 18-21 June 1979, and  
7 then it is also in, I don't know if that is  
8 Italian and Spanish, two other languages which  
9 say the same thing; is that correct?

10 A. Yes.

11 Q. And then it lists a number of  
12 participants in the conference, and it says.  
13 "494 participants, 66 nations."

14 A. Yes.

15 Q. And the U.S., apparently there were 59  
16 participants?

17 A. Yes.

18 Q. Now, if you will look at the first  
19 page, most of the people are listed, in terms of  
20 their name and then their affiliation and a city  
21 and a country?

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1 A. Yes.

2 Q. Okay. You see on the first page,  
3 Domingo Aviado is listed there?

4 A. Yes.

5 Q. And next to his name, it says doctor,  
6 and it just said Shore Hills, USA?

7 A. Yes.

8 Q. Do you know what group Dr. Aviado was  
9 at the conference representing?

10 MR. KLUGMAN: Objection to the form.

11 A. No. I do not.

12 Q. Do you know if the tobacco industry  
13 paid certain scientists to appear at the  
14 conference to ask questions?

15 A. Do I know absolutely that it did?

16 Q. I have a feeling if I say absolutely I  
17 know what the answer is. Do you have a belief  
18 that they did?

19 A. I believe they did, yes. Or it did.

20 Q. Okay.

21 A. I have no knowledge, I didn't see a

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1 check or a memo that said pay them, but I have no  
2 doubt that the tobacco industry or The Institute  
3 paid for some people to go there.

4 Q. Now, if you look on the page, if I can  
5 find it here, page 11 of the participants, down  
6 towards the bottom, it says: Shinn, William.  
7 You see that?

8 A. Yes.

9 Q. William Shinn was a participant at the  
10 conference, was he not?

11 A. I don't remember, but I -- I well, I  
12 just don't remember. Sometimes people do enroll,  
13 register and pay by mail and do not show up. He  
14 may well have been there.

15 Q. His affiliation is not listed by his  
16 name there, is it? Just says Kansas City, USA?

17 A. Yes.

18 Q. No attribution that he is from a law  
19 firm, correct?

20 A. No.

21 Q. And if you look under the P's, page

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1       ten, Fred Panzer, Washington, USA, do you see  
2       that?

3             A.     Yes.

4             Q.     Mr. Panzer was a Tobacco Institute  
5       employee, correct?

6             A.     Yes.

7             Q.     No attribution in this document that  
8       Mr. Panzer was with the Tobacco Institute?

9             MR. KLUGMAN:  Objection to the form.

10            A.     No.

11            Q.     Do you recall what Mr. Panzer's title  
12       was with the Tobacco Institute?

13            A.     I know he was an officer or  
14       vice-president, and I am not sure, I am sure of  
15       what he was not, but that's not the answer.  I  
16       can't recall what his specific area of expertise  
17       was.

18            Q.     But he was an executive at the Tobacco  
19       Institute?

20            A.     He was a vice-president, yes.

21                    (Whereupon, Zahn Exhibit No. 19,

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1 memorandum from Panzer to Kornegay, dated May 1.  
2 1972, was marked for identification.)

3 Q. Let me show you what I will mark as  
4 Exhibit 19, I will just digress for one moment,  
5 which was May 1, 1972, from Fred Panzer to Horace  
6 Kornegay, subject the Roper Proposal.

7 Now, Mr. Kornegay was the president of  
8 the Tobacco Institute?

9 A. Yes.

10 Q. And Mr. Panzer writes to Mr. Kornegay  
11 in May of 1972 under general comments:

12 "It is my strong belief that we now  
13 have an opportunity to take the initiative in the  
14 cigarette controversy and start to turn it  
15 around. For nearly 20 years, this industry has  
16 employed a single strategy to defend itself on  
17 three major fronts: Litigation, politics and  
18 public opinion.

19 While the strategy was brilliantly  
20 conceived and executed over the years, helping us  
21 win important battles, it is only fair to say

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1     that it is not, nor was it intended to be, a  
2     vehicle for victory.

3             On the contrary, it has always been a  
4     holding strategy consisting of creating doubt  
5     about the health charge without actually denying  
6     it, advocating the public's right to smoke  
7     without actually urging them to take up the  
8     practice, encouraging objective scientific  
9     research as the only way to resolve the question  
10    of health hazard."

11            Do you see that?

12           A.    Yes.

13           Q.    Did Mr. Panzer ever share with you his  
14    belief that the strategy had been a holding  
15    strategy consisting of those three elements?

16           MR. KLUGMAN:  Objection to the form.

17           A.    Not that I can recall.

18           Q.    Okay.  And then he continues in his  
19    memo:  "On the litigation front, for which the  
20    strategy was designed, it has been successful."

21           Do you see that?

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1 A. Yes.

2 Q. Did anybody ever share with you that  
3 the tobacco industry strategy had been designed  
4 for the litigation front?

5 MR. KLUGMAN: Objection to the form.

6 A. No. I don't recall anyone saying that.

7 Q. Have you ever seen this document  
8 before?

9 A. I don't remember it, no. I may have,  
10 but I have no recollection whatsoever.

11 Q. The document continues: "While we have  
12 not lost the liability case, this is not because  
13 juries have rejected the anti-smoking arguments.

14 On the political front, the strategy  
15 has helped make possible an orderly retreat. But  
16 it is fair to say that it has not stemmed the  
17 pressure for new legislation despite the major  
18 concessions we have made.

19 On the public opinion front, however,  
20 our situation has deteriorated and will continue  
21 to worsen. This erosion will have an adverse

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1 effect on the other fronts, because here is where  
2 the beliefs, attitudes and actions of judges,  
3 juries, elected officials and government  
4 employees are formed."

5 You see that?

6 A. Yes.

7 Q. Were you involved at all in formulating  
8 the public opinion front for the tobacco  
9 industry?

10 MR. KLUGMAN: Objection to the form.

11 A. To the extent of presenting the  
12 Council's program in terms of research support, I  
13 suppose so.

14 Q. And then Mr. Panzer's memo goes on. He  
15 has a heading entitled "the strategic impasse."

16 "As an industry, therefore, we are  
17 committed to an ill-defined middle ground which  
18 is articulated by variations on the theme that  
19 the case is not proved."

20 Do you see that?

21 A. Yes.

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1 Q. That is what the subject of your 1979  
2 press release was, was it not, Exhibit 1?

3 MR. KLUGMAN: Objection to the form.

4 A. I suppose so, yes, I would say so.

5 Q. Let's get back to ICOSI. Let me --

6 MR. KLUGMAN: New documents? Are we  
7 going back to the old ones?

8 MR. KRISTAL: No, we are moving to some  
9 new ones. Pressing on. Trying to make progress.  
10 You want me to go back, I will.

11 MR. KLUGMAN: I can't believe what you  
12 missed in those documents.

13 Q. Exhibit 20 and 21, let me give you a  
14 matched set.

15 Exhibit 20 is a February 8, 1979 memo  
16 from Mr. Hartogh referencing a final action  
17 plan.

18 Exhibit 21 is entitled action plan.  
19 And I will also give you Exhibit 22 and  
20 Exhibit 23.

21 Exhibit 22 is an appendix Number One to

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1 the action plan, and Exhibit 23 is Appendix Two  
2 to the action plan; and I believe, and you will  
3 have a chance to look at it, you participated in  
4 writing Exhibit 22, which is Appendix One of the  
5 action plan.

6 (Whereupon, Zahn Deposition  
7 Exhibit No. 20, memo dated February 8, 1979, from  
8 Hartogh to distribution, marked.)

9 (Whereupon, Zahn Deposition  
10 Exhibit No. 21, action plan, marked.)

11 (Whereupon, Zahn Deposition  
12 Exhibit No. 22, conference program analysis,  
13 marked.)

14 (Whereupon, Zahn Deposition  
15 Exhibit No. 23, action proposed by subcommittee,  
16 marked.)

17 MR. KRISTAL: Having said that, I will  
18 give you these.

19 MR. SCHEINER: On this copy, there is  
20 something on the back. It is a portion of a  
21 document.

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1 MR. KRISTAL: My original copies were  
2 copied on recycled paper.

3 MR. KLUGMAN: You want to replace  
4 that?

5 MR. KRISTAL: Yes.

6 MR. KLUGMAN: What's the number of that  
7 one?

8 MR. KRISTAL: Okay. No problem.

9 MR. SCHEINER: Number 20.

10 MR. KRISTAL: Those are in order, 20,  
11 21, 22, 23.

12 MR. KLUGMAN: These are okay. You want  
13 him to look at them and read them or anything?

14 Q. Take a look at them while I'm marking  
15 these and then I have some questions about them.

16 See if we can do this in an orderly  
17 fashion. Exhibit 20 is the February 8, '79 memo  
18 from Hartogh to a long distribution list on the  
19 bottom, do you see that?

20 A. Yes.

21 Q. Your name is listed as being on the

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1 distribution list?

2 A. Yes.

3 Q. What is being distributed is a final  
4 action plan to cover the forthcoming Fourth World  
5 Conference on Smoking and Health in Stockholm,  
6 June of 1979, which has been approved by the  
7 Executive Committee in February of 1979.

8 Do you see that?

9 A. Yes.

10 Q. And then Exhibit 21 is entitled action  
11 plan proposed by the ICOSI Task Force, Fourth  
12 World Conference on Smoking and Health, in  
13 Stockholm, June of '79, right?

14 A. Yes.

15 Q. Someone has written in handwriting at  
16 the top approved by X committee Amsterdam,  
17 5-6-79.

18 A. Yes.

19 Q. The introduction reads: "Task Force,  
20 headed by J. M. Hartogh, met in Kansas City on  
21 November 20/21, 1978."

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1 Do you recall that was the document  
2 where there was a list of people at a meeting  
3 where your name was listed as a participant in  
4 Kansas City?

5 MR. KLUGMAN: Objection to the form.  
6 That is not what the testimony is.

7 Q. It was an earlier document I marked  
8 from the Kansas City meeting.

9 A. Yes. I remember that.

10 MR. KLUGMAN: 16.

11 THE WITNESS: Yes. I remember, my name  
12 is there.

13 Q. It says: Two working committees were  
14 formed. One, conference program analysis headed  
15 by M. Senkus, Appendix One; and, two, third world  
16 implications of conference, headed by G.  
17 Hargrove, Appendix Two?

18 A. Yes.

19 Q. G. Hargrove was Gwynn Hargrove, you  
20 recall Mr. Hargrove?

21 A. Yes. I remember.

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1 Q. Under strategy, it says here: "ICOSI  
2 coverage of the conference will be (qua ICOSI)  
3 low profile." Do you see that?

4 A. Yes.

5 Q. Do you recall that as being your  
6 working instructions?

7 MR. KLUGMAN: Objection to form.

8 A. I don't recall that at all, but it  
9 could well have been.

10 Q. Under action on page two, preconference  
11 action, it reads:

12 "A Stockholm based public relations  
13 agency, which is already handling PR for the  
14 Stockholm exhibition and convention complex, has  
15 been appointed to handle logistic matters to  
16 monitor the conference organizer's activities and  
17 to assist with press room activities at the  
18 conference, if and when necessary, but under the  
19 strict control of Task Force members present in  
20 Stockholm.

21 In any case, all agency activities on

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1       behalf of the industry will be without a public  
2       profile."

3                     Do you see that?

4             A.     Yes.

5             Q.     Why was that done?

6                     MR. KLUGMAN:  Objection to the form.  
7       Lack of foundation.

8             A.     Well, I guess, you would have to ask  
9       Hartogh and the Executive Committee, but wasn't  
10       there something just before that we looked at  
11       that said the ICOSI would operate without any  
12       public attention or something to that effect?

13             Q.     Yes.  My question is:  Why would that  
14       be done?

15                     MR. KLUGMAN:  Objection to the form.  
16       Lack of foundation.

17             A.     I would assume because they wanted to  
18       not to have any public profile shown.

19             Q.     Now, if you look at Exhibit 21, which  
20       is in the upper right-hand corner, I'm sorry,  
21       22.  Thank you.  Appendix One.

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1 ICOSI Task Force Fourth World  
2 Conference on Smoking and Health, and it says  
3 conference program analysis.

4 Do you see that?

5 A. Yes.

6 Q. It says prepared by a subcommittee  
7 headed by M. Senkus and members L. Zahn and T.  
8 Finnegan. Do you see that?

9 A. Yes.

10 Q. Do you recall now this subcommittee  
11 with you, Mr. Finnegan, and Mr. Senkus on it?

12 A. No. I do not.

13 Q. It says under the background: "Impetus  
14 for the Fourth World Conference on Smoking and  
15 Health came originally from the National Smoking  
16 and Health Association of Sweden shortly after  
17 the conclusion of the third conference in 1975.

18 The conferences have been held so far  
19 every four years. The Swedish government offered  
20 to provide funding.

21 The organizers include the Swedish

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1 Ministry of Health and Social Affairs and the  
2 country's Smoking and Health Association. Among  
3 the co-sponsors are WHO, International Union  
4 Against Cancer, International Union Against  
5 Tuberculosis and others."

6 Do you recall the ICOSI position that  
7 those groups that I just mentioned were part of  
8 the "anti-smoking forces"; do you recall that?

9 MR. KLUGMAN: Objection.

10 A. I just do not know.

11 Q. Then it is listed in this program  
12 analysis, which as it states you helped prepare,  
13 conference has three stated themes.

14 One, the claimed impact of smoking on  
15 health as well as smoking and society, which  
16 includes sessions on advertising, youth and  
17 passive smoking.

18 Do you know what the tobacco industry's  
19 position was with respect to those three items,  
20 advertising, youth and passive smoking?

21 A. I would assume. Well, I shouldn't

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